

August 27, 2010

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VIA ELECTRONIC COMMENT FILING SYSTEM and OVERNIGHT DELIVERY

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

**RE: REQUEST FOR REVIEW OF USAC DENIAL OF APPEAL OF
COMMITMENT ADJUSTMENT DECISION**
CC Docket No. 96-45
CC Docket No. 02-6
Funding Request Number: 1429088
SPIN: 143029024
Service Provider: Kane Communications, LLC
Form 471 Application No.: 519331
Funding Year: 1996
Applicant Name: Essex County Vocational Schools
Billed Entity No.: 151489

Dear Ms. Dortch:

Please be advised that we represent Kane Communications, LLC (“Kane” or “Appellant”) with respect to this Request for Review. Specifically, Kane filed an appeal of a May 12, 2010 Commitment Adjustment Decision (“Decision”) with respect to Funding Request Number 1429088, Form 471 Application Number 519331 (the “Appeal”) with USAC on or about July 7, 2007. A full and complete copy of Kane’s Letter of Appeal with Exhibits is attached hereto as Exhibit 1. On July 22, 2010, USAC denied Kane’s Appeal. A true and correct copy of the Administrator’s Decision on Appeal (“Administrator’s Decision”) is attached hereto as Exhibit 2.

In the Administrator’s Decision, it states:

After a thorough review, USAC has determined that the funding commitment for this request must be reduced by \$165,079.52. During the course of review, it was determined that funding was provided for the following ineligible items: excess number of cabling drops. The pre-discount cost associated with these items is \$183,421.69. At the applicants 90 percent discount rate this resulted in an improper commitment of \$165,079.52. On the

SPAC Form, the authorized person certified at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore, USAC has determined that the service provider is responsible for this rule violation. Accordingly, USAC reduced the amount of funds committed by \$165,079.52, and sought recovery of improperly disbursed funds from the service provider. On appeal, you have failed to demonstrate that USAC erred in its decision to rescind funding. Subsequently, your appeal is denied.

Kane asserts that the Administrator's Decision to reduce the funding commitment and seek recovery from Kane was in error. Rather, Kane maintains that no reduction in funding commitment is required. In the alternative, any reduction in funding must be recovered from the Applicant, Essex County Vocational Technical Schools (the "District").

On or about December 11, 2005, the District posted its Form 470 Application and solicited bids for provision of the following services:

- Upgrade of Local Area Network Hardware in all four (4) district schools;
- Upgrade File Servers in all four (4) district schools;
- Upgrade UTP Cabling Infrastructure in all four (4) district schools;
- Implement Wireless System Infrastructure in all four (4) district schools;
- Implement additional Fault Tolerant Call Manager in all four (4) district schools;
- Implement IP Telephony Emergency Services in all four (4) district schools, and,
- Technical Support in all four (4) district schools.

In February 2006, Kane responded to the District's posting and submitted a quotation for the cabling infrastructure only (third bullet) for each of the four (4) district schools. The District accepted Kane's quotation in its entirety (\$1,431,395). Subsequently, the District filed a Form 471 Application and attached the quotation of Kane as support. On October 24, 2006, USAC approved the District's Form 471 (with a 90% approved discount percentage) for FRN 1429088. As a result, on December 20, 2006, USAC transmitted a Form 486 Notification Letter to Kane and specifically stated that the funding commitment decision of \$1,288,255.50 was approved for FRN 1429088. Now, Kane has received the Decision stating that the funding commitment must be reduced by \$165,079.52. The following details Kane's Appeal.

1. No funding reduction is required

As its name suggests, Essex County Vocational Technical Schools are different from mainstream schools. Instead, the district provides state-of-the-art instruction in over 30 career and technical areas including health careers, music production, computer and business technology, law and public safety, graphic design, green energy, television production, dental

assistance, automotive, building trades, culinary arts and cosmetology. As a result, the District has larger technology requirements than mainstream high schools.

Pursuant to New Jersey law, the District must periodically submit a Local District Technology Plan ("Technology Plan") which must be approved by both the District and the New Jersey Department of Education (the "DOE"). It is the Technology Plan that governs the infrastructure, hardware, software and devices that is placed within the District. Since this District is composed solely of vocational and technical schools, the DOE maintains higher requirements than other school districts.

The Executive Summary of the District's current Technology Plan describes the need for these inflated requirements:

. . . As a regional technical school, the district places special emphasis on the SCANS array of skills and endeavors to instruct its students on the application of technology . . .

The district also has the unique mission and challenge of providing high level educations opportunities for at risk students from the urban centers of Essex County. Many families in our community are living at or below the poverty level. In most instances, lack of availability of computer and Internet access is the rule. The district thus endeavors to offset these limitations by providing the fullest access to technology to its students in all of its classes, seeking methods of providing access for out students and their families to such technology: in the workplace, in their community and even in their homes.

A full and complete copy of the District's Technology Plan is attached hereto as Exhibit A to Exhibit 1.

The Technology Plan specifically references the scope of services provided by Kane. In the Overview of its technology the District states:

During the school year of 2006-07 we are in the process of implementing new data wiring of CAT 6 cabling, Wireless Technology and the new Cisco Voice Over IP phone system through out [sic] the entire district. Each classroom will have at least one phone and our Central Office staff and other staff members will each have a phone with access to voicemail via phone or e-mail as well.

This scope was required and approved by the New Jersey Department of Education. The volume and scope of services provided by Kane was approved by USAC prior to the work being

performed. The volume and scope of services provided by Kane was performed in accordance with the District's Technology Plan. As a result, the number of drops is not excessive and the funding commitment should not be reduced.

Further, the Administrator's Decision states that the number of drops is excessive and references Kane to the USAC website (www.usac.org/sl, Eligible Services List) and 47 C.F.R. §§54.502 and 54.503. However, neither the USAC website nor the Federal Regulations reference or include a required number or limit to the number of technological devices installed per student or overall in a particular school. Instead, the documentation solely discusses the type of equipment. Kane installed the proper type of equipment which is eligible for funding. The quantity is at issue. As discussed above, the volume and scope was determined by the District and its mandated requirements. There are no number or ratio limits established by USAC or the FCC. As a result, the number of cabling drops cannot be found to be excessive as no such guidance or requirement exists within the USAC/FCC program. Therefore, the funding commitment must not be reduced.

2. Any reduction in funding must be recovered from the District

If you do not agree that the number of drops made were not only adequate but necessary, it is the District, and not Kane Communications, that is responsible for reimbursement. Although payment was made to Kane, payment was made for services performed. Those services remain in place and Kane is entitled to receive fair compensation for the provision of those services. It is the District who required and dictated the services performed. Therefore, any ineligible services provided were provided at the risk of the District, not Kane.

After the District posted its Form 470 Application in December 2005 and before it accepted bids, it required that any potential bidder perform a walk through of each school during which the District stated the type and position of each drop that was to be made. Throughout the term of the project, the District determined the scope and volume of Kane's work. Kane did not possess any independent authority with respect to this work. If Kane had a question, a Request for Information ("RFI") was sent to the District's attention and Kane awaited an answer from the District. An example of three (3) RFIs is attached as Exhibit B to Exhibit 1. Moreover, throughout the project, Kane was directed by the District to add or relocate drops. Examples of this are e-mails from the District's IT administrator to Kane attached hereto as Exhibit C to Exhibit 1.

The District has alleged that at the time of Kane's contract, it did not have in-house staff to determine the number of drops required to meet its technology goal and instead relied upon Kane for this information. Kane vehemently disagrees with this allegation. The District did have in-house personnel. Terence Hansford served as the District's Network Systems Administrator and provided day to day direction to Kane. See Exhibits B and C to Exhibit 1. Additionally, the District utilized the services of a Technical Consultant, Edrich Semper, at the time of Kane's contract. In fact, Mr. Semper is listed as the contact on the District's Form 470 Application and it is Mr. Semper who certified that Kane provided the services for which it

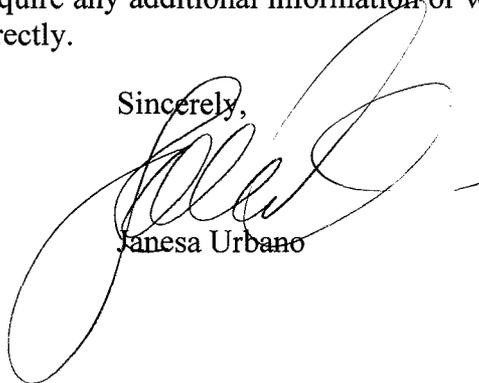
invoiced. True and correct copies of the Service Certifications are attached hereto as Exhibit D to Exhibit 1.

Finally, Kane was not engaged to provide any type of design services. The Request for Proposal issued by the District as well as the scope of services ultimately provided only required Kane to provide installation services. Kane did not design this project. Kane did not determine the technology requirements for this project.

As demonstrated above, the District determined the scope of the services provided by Kane, the District directed the services provided by Kane and the District certified the services provided by Kane. As a result, if you do not agree that the number of drops made were not only adequate but necessary, it is the District, and not Kane Communications, that is responsible for reimbursement.

As counsel for Kane Communications, LLC, I am authorized to submit this Request for Review to your attention. If you require any additional information or would like to discuss this matter further, please contact me directly.

Sincerely,



Janesa Urbano

JU/pcf
Enclosures

cc (with enclosures): Melissa M. Kane
Dan Riordan