



**GREENFIELD UNION SCHOOL DISTRICT**

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**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the matter of )  
)  
Request for Review/Waiver by )  
)  
Greenfield Union School District )  
Bakersfield, California )  
)  
Schools and Libraries Universal Service ) CC Docket No. 02-06  
Support Mechanism )  
)

**REQUEST FOR REVIEW/WAIVER**

Billed Entity Name: Greenfield Union School District  
Funding Year 2007 (July 1, 2007 – June 30, 2008)  
Form 471 Application Number: 570791  
Billed Entity Number: 143940  
FCC Registration Number: 0013022488  
Funding Request Numbers: 1575898 (JV) and 1575926 (Serban)

**I. Introduction and Background**

Greenfield Unified School District ("Greenfield") respectfully requests a review of the Administrator's Decision on Appeal<sup>1</sup> issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), dated

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<sup>1</sup> Please see attached copy.

March 11, 2011, which denied the above-cited Funding Request Numbers (FRNs) on the above-cited Form 471.

Greenfield is a California public school district, eligible to participate as an applicant in the Universal Service Support Mechanism for Schools and Libraries (commonly known as "the E-rate program").

There are two separate issues identified with the above-cited FRNs. First, there is the issue of whether or not an RFP was issued by Greenfield. Second, there is the issue of whether the maintenance contracts contained the model number of the covered eligible internal connections components.

The background on this, for both FRNs, is that when Greenfield issued its Funding Year 10 (2007-2008) Form 470 Number 638200000604451<sup>2</sup>, it indicated that a Request for Proposals (RFP) would be issued. The RFP was in fact prepared and distributed through our E-rate consultant, Infinity Communications. Several bids were received and the most cost-effective solutions were chosen. Contracts for Basic Maintenance were finalized with both JV Communications (JV) and Serban's Background Music Inc. (Serban).

In early 2009, an audit of Greenfield's compliance with the E-rate program regulations was conducted by KPMG. At that time Greenfield was asked to produce a copy of the RFP for these FRNs. It was then that we discovered our consultant's database had been corrupted and they were unable to produce a copy of the actual RFP. The auditor's final report stated that "Although the Beneficiary had a system for archiving documents, they were unable to obtain the documentation from the system upon our request."

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<sup>2</sup> Again, this Form 470 (and the background discussion) is pertinent to both FRNs cited.

The reason for this was that RFPs were stored only electronically, and only on our consultant's website, and due to the corrupted database, copies of the RFPs were not able to be retrieved. However, we were able to establish that the RFP had existed and had been downloaded from the consultant's website. Having an RFP is significant because there was not sufficiently detailed and specific information within the Form 470 itself for service providers to make informed offers for the services sought.

SLD issued a Notification of Commitment Adjustment for the above-cited FRNs, in which it stated it determined "after a thorough investigation" that although we indicated on the underlying Form 470 Number 638200000604451 that we issued a request for proposal, "during the course of an audit it was determined that [Greenfield] did not issue a request for proposal."<sup>3</sup>

Greenfield appealed the Notification of Commitment Adjustment, and subsequently received the above-cited Administrator's Decision on Appeal dated March 11, 2011.

The Administrator's Decision stated:

"Since you failed to retain the above specified documentation or produce the above specified documentation upon request of an authorized representative/ an auditor, USAC rescinded your funding requests. On the appeal you failed to prove that the USAC's decision was incorrect. Therefore, your appeal is denied."

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<sup>3</sup> Note that there is leap in logic here, from inability to produce a copy of the RFP, to the conclusion that the "audit...determined [Greenfield] **did not issue** a request for proposal." (emphasis added)

Given that we can establish the downloads<sup>4</sup>, we think it is unreasonable to hold that no RFP existed simply because (due to an electronic problem) we could not produce it. (We have since changed our policies so that the district saves hard copies of E-rate documents and the consultant saves both electronic and hard copies of E-rate documents, so this should not be a problem in the future.)

## II. Discussion

### A. Summary of Circumstances

Greenfield has used the same consulting firm, Infinity Communications (Infinity), since 2003. We have had no problems in either prior or subsequent funding years, with documentation retention or any other requirement of the E-rate program. Infinity has over 200 school district clients in California and over the years has issued more than 2000 RFPs. For each project Infinity prepares a download report, showing when and by whom the RFP was downloaded from the Infinity website.

In prior and subsequent years there has never been a problem with getting a copy of any RFP from the Infinity system. However, due to a corrupted database that Infinity controlled, the subject RFP that was issued in conjunction with the Funding Year 10 Form 470 could not be produced.

While we recognize the difficulty in trying to prove a negative, given the surrounding circumstances (that we have always issued RFPs where needed, and that our consultant has a reliable system for keeping copies that failed in only one instance (and which has since been improved), that we can establish not only who responded to the competition but who actually downloaded the RFP,

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<sup>4</sup> Please see attached printout showing the download requests and dates.

and most importantly, that no complaints were made by vendors that they lacked information) we feel that it is harsh and arbitrary to draw the inference that no RFP could have existed.

#### B. Contract Issues

Finally, on the issue of the contract, the circumstances surrounding the contracts must be considered. The service providers that now hold the contracts to provide maintenance on the systems are the very ones who installed the systems initially. For the initial installation, the Item 21 attachment to the pertinent Form 470 clearly identified both the Eligible and Ineligible components of the system(s). It was clear to both the district and the service providers that discounts on maintenance would be requested for eligible components only. Both contracts contain clauses to the effect that invoicing will be done "in accordance with funding guidelines" so it is clear that both service providers understood the requirement to separate out eligible and ineligible equipment.

Additionally, we note that Funding Year 2007 was the first year that the requirement for the listing of eligible equipment was included in the Eligible Services List. Again, since these contracts were for ongoing service on the equipment previously installed by these service providers, we did not catch up with the new requirement. We are confident that all the guidelines were met, even if not explicitly listed in the contracts.

#### C. Due Process Concerns

We feel it necessary to draw the Commission's attention to a flaw in SLD procedures surrounding commitment adjustments, which can lead to a denial of due process rights.

When the Notification of Commitment Adjustment Letter is issued it contains information about the right to appeal and correctly includes the "60 days from the date of this letter" deadline.

When the Administrator's Decision on Appeal is issued, it contains the following statement:

"The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC)."

However, once the Administrator's Decision denying the appeal is issued, USAC almost *immediately* issues a Demand Payment Letter<sup>5</sup> (based on the initial Notification of Commitment Adjustment). Such Demand Payment Letter contains the following language:

"The balance of this debt is due within **30 days** from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and the implementation of the 'Red Light Rule.'" (emphasis added)

The Demand Payment Letter does NOT contain any appeal language, however, since it is an administrative decision, it should be subject to appeal. Even if it were not, the fact that the imposition of fees, penalties or other consequences could start *within* the appeal period of the previously issued Administrator's Decision is troubling, to say the least.

Additionally, the imposition of the Red Light Rule can have severe consequences, as expressed in the Demand Payment Letter ("The FCC's Red Light Rule requires

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<sup>5</sup> In the instant case, the separate Demand Payment Letters were dated March 14, 2011, just three (3) days after the Administrator's Decision on Appeal was issued.

USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC.”). There is nothing indicated in the letter that would stop the imposition of the Red Light Rule during the course of the 30 days, even if the entity exercised its appeal rights.

In fact, in a prior situation also involving Greenfield, the Red Light Rule was imposed despite the fact that Greenfield gave notice to USAC that an appeal of the underlying Administrator’s Decision on Appeal had been filed with the FCC. Although USAC indicated that it would issue a formal withdrawal of the, no such withdrawal has yet been received.

At a minimum, USAC should be prevented from issuing the Demand Payment Letter (or placing an entity on Red Light status) until such time as the appeal rights for *all* administrative decisions made on the underlying circumstances have expired.

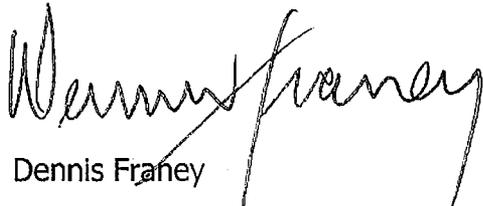
### III. Prayer for Relief

We respectfully seek review of the Administrator’s Decision and ask that the entire set of circumstances surrounding the posted Form 470 be taken into consideration in deciding whether Greenfield, in fact, can be found *not* to have issued an RFP. It seems to defy common sense that after Greenfield indicated to the auditors that a glitch in the system prevented production of the subject RFP, Greenfield would be denied funding on the basis that no such RFP ever existed.

### Alternative Waiver Request

In the alternative, if Greenfield is found to have violated the competitive bidding requirements by not having issued an RFP (when it indicated that it would), we respectfully ask that such requirement be waived. Strict compliance with the rule would not further the purpose of 47 U.S.C. § 254(h), which directs the Federal Communications Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries." To uphold the denial of funding would inflict undue hardship on the thousands of students served by Greenfield.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis Frahey". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Dennis Frahey

Assistant Superintendent of Business