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August 1, 2011

VIA ECFS ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: REQUEST FOR REVIEW
CC Docket No. 02-6
Billed Entity Name: Florence County School District 3
Form 471 Application Number: 504103
Billed Entity Number: 127203
FCC Registration Number: 0011907649

Dear Ms. Dortch:

Pursuant to 47 C.F.R. 54.719, Florence County School District Three (hereinafter "the District") hereby appeals and submits this request for review of the Universal Service Administrative Company's (hereinafter "USAC") March 11, 2011 commitment adjustment letter (Attachment A) and June 2, 2011 Administrator's Decision on Appeal (Attachment B) regarding Funding Commitment Adjustment Report for Form 471 Application Number 504103.

By way of background, USAC rescinded funding for the District's Form 471 Application Number 504103, Funding Request Number 1390918 for Funding Year 2006-2007 in the amount of \$98,856.26 by letter to the District dated March 11, 2011. This decision was issued following USAC's October 13, 2010 memorandum on the results of USAC Audit No. SL2007BE160, an audit to determine the District's compliance with Schools and Libraries Support Mechanism Rules. (Attachment C) The underlying audit, conducted by KPMG, LLC (hereinafter "KPMG"), covered disbursements made during the period between July 1, 2006 through June 30, 2007. As a result of the February 8, 2008 exit conference held by KPMG, which did not identify any issues with the District's production or non-production of bid documents related to E-rate eligible services, the District understood that the audit had been completed with no substantial issues or concerns. However, approximately two and a half years later, by letter dated September 2, 2010 (Attachment D), the District was advised that KPMG had withdrawn

from the engagement, thus requiring the initial reporting of 100% of the SLP support received for the audit period as improper for purposes of the Improper Payment Information Act (IPIA). USAC's Internal Audit Division then completed its examination started in 2008, issuing its decision dated October 13, 2010. That examination determined that the District could not provide documentation to support that it had selected the most cost-effective service provider for E-rate services. A commitment adjustment letter dated March 11, 2011, was received by the District on March 31, 2011. The District submitted an appeal by letter dated May 31, 2011, which was denied by USAC by letter dated June 2, 2011, as untimely. The present appeal followed.

Notwithstanding the District's failure to produce RFP Response Evaluation Worksheets to USAC upon request six and a half years after the bidding process concluded, the District believes that appropriate selection procedures were followed and that evidence provided by the District establishes that the bid selected was the most cost-effective service or equipment offering, with price being the primary factor. As an initial matter, the District notes that in January and February 2004, the time that it awarded the bid and procured the services of Conterra, LLC, pursuant to a five-year agreement, over that of the only other bidder, Trillion Digital Communications, the relevant regulations required that the District "carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers." 47 C.F.R. §54.511(a) (Oct. 2000). Only several months later did FCC's Fifth Report and Order, released August 13, 2004, amend 47 C.F.R. §54.504(c)(1) to include the requirement that "all bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals" and clarify the type of documents to be maintained. See 47 C.F.R. §§54.504(c)(1) and 54.516(a)(1).

Although USAC determined that the District's failure to produce or retain a particular document, the RFP Response Evaluation Worksheets¹, prevented it from determining the cost-effectiveness of Conterra's bid, the District submitted substantial documentation to FCC to establish that it had complied with relevant competitive bidding rules, including state and local procurement laws. Specifically, the District produced the two responsive bid applications, a November 11, 2005 memorandum explaining the selection review process, and September 23, 2010 correspondence further explaining the District's selection process. (Attachment E) As explained in those documents, among the pricing components analyzed by the District were Conterra's ability to provide 100 Mbps Full Duplex implementation at the pricing proposed for the 10 Mbps Full Duplex option and the substantial cost to the District to replace all of the radios in its system were it to utilize Trillion's proposal. In reviewing the bid documents, the District determined that Conterra was the most cost-effective option, long-term, for the District.

¹ The District wishes to notify the FCC that the United States Department of Justice subpoenaed and retained a large majority of District E-rate service records during an investigation into a third-party complaint in 2008. In accordance with 47 C.F.R. 54.516(b), the District produced the requested records. Had KPMG or USAC timely advised the District of the missing documents prior to the District pulling, reorganizing, and forwarding its E-rate documents to the DOJ, the District may have been able to produce the specific evaluation worksheets.

Marlene H. Dortch, Secretary

August 1, 2011

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Although price was the primary factor in the District's consideration, it did consider other factors, in accordance with state and local procurement codes and the regulations in effect at the time of its decision. Specifically, the District contacted clients of Trillion Digital Communications, who provided negative feedback and advised the District that they had experienced long delays in implementation of services and even failures by Trillion Digital Communications to install contracted systems. Moreover, Trillion Digital Communications, which USAC determined to be the lowest bidder in 2004, ceased to exist as of February 16, 2006, following a corporate buy-out, and, therefore, as the District understands it, Trillion would have been unable to complete services in accordance with its bid submission during the relevant funding year.

Lastly, the District requests that the FCC review the District's history of compliance with USAC program rules. Absent its inability to locate a particular document six and a half years after the bid process, which failure followed KPMG's audit and DJJ's subpoena, the District has complied with all other rules and obligations imposed by the School and Libraries Division. Further, reimbursement in the stated amount would be a significant financial burden on a small, rural school district.

Based on the above, the District requests that the FCC reverse USAC's March 11, 2011 commitment adjustment letter and June 2, 2011 denial. In the alternative, the District requests that FCC direct USAC to reconsider the amount it seeks to recover from the District, calculating a lesser amount based on the timelines presented and the District's history of compliance.

Sincerely,

A handwritten signature in cursive script that reads "Meredith L. Seibert".

Meredith L. Seibert

Attachments