Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Requests for Review of	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Bloomfield Public School District	)	File Nos. SLD-498,690, 545994, 600085,
Bloomfield, New Mexico	)	656519, 693027, 739004
	)	
	)	CC Docket No. 02-6
	)	

PETITION FOR RECONSIDERATION AND
WAIVER OF COMMISSION RULE ON 30-DAY FILING

The Board of Education of the Bloomfield Public School District, Bloomfield, New Mexico (School District) petitions the Federal Communications Commission (Commission) to reconsider the School District's request for review of the Universal Service Administrative Company's (USAC) denial of funding under the E-rate program, dated October 21, 2010, and appended to this Petition as Exhibit A. Further, the School District requests that the Commission waive the 30-day deadline for filing the reconsideration request. As grounds therefore, the School District states the following.

RECONSIDERATION

1. On June 12, 2009, USAC notified the School District that its service provider, Trillion Partners, Inc. (Trillion) was named as one of several defendants in a complaint brought by the State of Arizona alleging antitrust, bid rigging, procurement fraud, and conflict of interest violations of Arizona law. The complaint alleged that, among other things, Trillion, who

submitted a bid related to Tucson Unified School District (TUSD) E-rate program applications, obtained inside information from TUSD's E-rate program consultant and provided gifts and gratuities to TUSD administrative employees involved in the procurement process. Trillion and TUSD settled the case and entered into consent judgments with Arizona.

2. Apparently, the TUSD matter raised concerns by USAC as to whether *other* funding requests associated with Trillion were noncompliant, and caused USAC to request information from the School District to determine whether it was in compliance with Commission rules governing the E-rate program.

3. On June 2, 2010, USAC notified the School District that it was in the process of reviewing the School District's funding requests with Trillion to ensure that they were in compliance with USAC rules. USAC was concerned that e-mail correspondence between the School District and Trillion which predated the filing of Form 470 may have affected the fair and competitive bidding process.

4. In August of 2010, the School District first contacted its legal counsel, Cuddy & McCarthy, LLP, about the matter involving the allegations against the School District for violations of the federal requirements for an open procurement process to award their E-rate contract.

5. On September 9, 2010, the School District responded to USAC, explaining the problems with Wide Area Network services in underserved rural areas of New Mexico, its lack of pertinent technical expertise, and its search for alternatives through contact with a technology vendor, Trillion. The School District also discussed the receipts for meals and travel that USAC claimed demonstrated violations of the Commission's procurement rules.

6. On October 21, 2010, the USAC issued a Notification of Commitment Adjustment Letter, denying E-rate funding on the grounds that funds were committed in violation of E-rate program rules. USAC alleged that prior to and throughout the School District's contractual relationship with Trillion, School District employees were offered and accepted meals, gratuities, or entertainment from Trillion, which resulted in a competitive process that was no longer fair and open.

7. The School District then appealed the USAC denial, but the School District's legal counsel was not consulted to assist in preparing the appeal. In fact, the School District's legal counsel was not aware until recently that the USAC had issued the Notification of Commitment Adjustment, nor that an appeal of that decision had been filed with the Commission.

8. On February 23, 2012, the Commission denied the School District's request for a review of USAC's decision. In its Order, the Commission noted that, while USAC had denied the School District funding requests due to receipt of gifts, the Commission based on its decision on its finding that the School District violated the Commission's competitive bidding rules by engaging in improper communications with Trillion. As support for the decision in its Order denying review, the Commission relies on prior decisions relating to E-rate funding.

9. The Commission's decision focused on the communications issues referred to in ¶3 above, and not the meals or other gratuities. The School District perceives that this results from the Commission's Order DA-11-1854, issued after the USAC Notification of Commitment Adjustment Letter, but before the Commission decision in this case. In Order DA-11-1854, dated November 4, 2011, the Commission found that the gifts at issue did not, by themselves,

compromise the competitive bidding process because they were minimal or given to employees who had no authority to influence the bidding process.

10. On February 27, 2012, the School District contacted its legal counsel about this matter for the first time since August 2010. No attorney for the School District had been involved in any of the review, analysis, or appeals process during this critical time. Also critical is that no one from Trillion or the School District obtained any input from Sondra Adams, the School District's former Director of Technology and the employee involved in the e-mail communications challenged by USAC. Legal counsel contacted Ms. Adams, and in support of this Petition she presents an affidavit to explain the e-mail communications, and the misinterpretation as to her conversations with Trillion.

11. The Commission has established a fair and open bidding or proposal process as a means to prevent waste, fraud, and abuse of federal program resources. *Schools and Libraries Universal Service Support Mechanism,* Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26939, para. 66.

12. The Commission rules conclude that, when a FCC Form 470 contact person influences an applicant's competitive bidding or proposal process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding or proposal process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process. *Request for Review of Mastermind Internet Services, Inc. Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028.

13. Under the Commission rules, all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process. *Request for Review of Mastermind Internet Services, Inc. Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4033, para. 10.

14. Title 47 C.F.R. § 54.5039(a) presents the Commission's competitive bidding requirements. This subsection states that "all entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process."

15. This Section of the Code also identifies activities or behaviors that would not result in a fair and open competitive bidding or procurement process:

a. The applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information;

b. Someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification;

c. A service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process;

d. The service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way;

e. The applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process;

f. An applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and

g. The applicant's FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids.

16. USAC guidance provides further clarification:

> The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means that there are no secrets in the process, such as information shared with one bidder but not with others, and all bidders know what is required of them. The [FCC] Form 470 or the RFP should be clear about what products, services, and quantities the applicant is seeking. In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. *See* http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

17. In denying the School District's funding under the E-rate program, USAC pointed to e-mail correspondence between the School District and Trillion that occurred before the School District filed its Form 470. USAC contends that the e-mail exchanges suggest the School District intended to select Trillion for the contract for services without a fair and open competition.

18. The School District respectfully denies that it engaged in anything but a fair and open competitive bidding or procurement process. The communications between School District employees and Trillion were neutral and did not taint the bidding process. *See* Exhibit B, Affidavit of Sondra Adams. Neither did the discussions unfairly influence the outcome of the competition for E-rate services. *Id.* The School District did not furnish Trillion with any inside information which was not available to or shared with other prospective vendors, or allow it to unfairly compete in any way. *Id.*

19. The School District is located in an underserved area of New Mexico and has very limited options on networking services and Internet access. *Id.* To resolve its problems presented by its current inadequate and malfunctioning Wide Area Network, the School District started looking into options for networking services and Internet access, and identified Wireless Wide Area Networking as a possible solution. Rather than using limited School District resources on network engineering services, the School District sought the outside assistance of Trillion for its technical expertise only. Use of technical expertise was permissible under New Mexico procurement law and did not taint the competitive bidding process or slant the selection in favor of any proposed vendors.

20. The decision to use Wireless Wide Area Network services was solely the School District's decision.

21. Trillion did not prepare, sign, or submit the School District's Form 470 and certification. *Id.* This form was prepared and submitted by the School District and its E-rate consultant.

22. Trillion did not participate in the bid evaluation or vendor selection process in any way. *Id.*

23. On January 10, 2006, the School District published a solicitation for public bids or proposals through Form 470 for Wireless Wide Area Network data and voice services. Several bidders called the School District to inquire about the services required, but the School District received only one bid at the closing of the bid time frame. *Id.* The vendor was Trillion. The School District evaluated its bid response to ensure that it included all of the services and functionality the School District needed. Trillion was awarded the contract by public action of the School District Board of Education. *Id.*

24. The School District fully complied with the 28-day waiting period, during which every Wireless Wide Area Network vendor in the country had an opportunity to bid on the School District's Wireless Wide Area Network services.

25. Trillion met the School District's requirements, were cost effective, and were within budget. *Id.* The contract to Trillion was awarded in accordance with USAC requirements.

26. The School District provided all potential bidders access to the same information and treated them in the same manner throughout the procurement process. *Id.*

REQUEST FOR WAIVER OF 30-DAY FILING DEADLINE

1. Petitions for reconsideration must be filed within 30 days of the release date. 47 C.F.R. § 1.4(b)(2).

2. The Commission sent the School District the Commission's decision on its appeal of the USAC decision by memorandum dated March 7, 2012. The memorandum indicated that the School District had 30 days from the release date of the decision to file a petition for reconsideration.

3. In an oversight, the 30-day filing period was calculated from the date of the memorandum (March 7, 2012), not from the release date.

4. The release date for the Commission Order in this case was February 23, 2012. Thus, the 30-day period for filing a petition for reconsideration would actually have been March 24, 2012, which is a Saturday, thus making the due date Monday, March 26, 2012.

5. We understand that the Commission has strictly construed deadlines for filing petitions for reconsideration, and that it has in the past dismissed as untimely three petitions for reconsideration in Order DA 11-1018, dated June 8, 2011. However, in the situations covered by

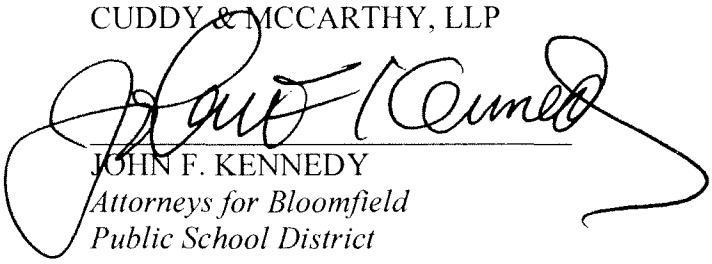
Order DA 11-1019, the appeals were filed 58 days or longer, one more than two years, after the Commission's original denials.

6. In this case due to a de minimus oversight, the Petition is filed three days past the deadline.

7. We also understand that the Commission's rules may be waived only by good cause shown. 47 C.F.R. § 1.3. Given that the School District is only days past the deadline, no third party will suffer any detriment if the deadline is extended, and the public interest would be served by allowing the waiver, we respectfully request a waiver of the 30-day rule and that the Commission allow our Petition for Reconsideration to be filed as timely.

WHEREFORE, the School District respectfully requests the Commission reconsider its denial of the School District's request for review of the USAC decision and grant a waiver of the 30-day rule for filing this Petition for Reconsideration.

CUDDY & MCCARTHY, LLP



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