



Anthony G. Brown
Lt. Governor

Martin O'Malley
Governor

Sam Abed
Secretary

Tuesday, April 03, 2012

To Whom It May Concern:

The Maryland Department of Juvenile Services has been attempting to get reconsideration of a ruling that was made denying funding for local telecommunications services procured in Funding Year 2008. We did receive reimbursement for three months of this funding year, but were denied for the other nine months due to a State Master Contract which expired, then was re-awarded for the balance of the year. The Department has received funding for the funding year prior to 2008, and for Funding Years '09, '10, and '11. All of these funding requests were for the same entities and using the same contract in question.

Following this letter is a Petition for Reconsideration for File No. SLD-505753, CC Docket No. 02-6.

Thank you very much for your consideration in this matter.

Sincerely,

Nancy Seidman

Telecommunications Manager

Maryland Department of Juvenile Services

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410-230-3489



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Application for Review by the full Commission)	
)	CC Docket No. 02-6
Decision of Trent Harkrader, Chief Telecommunications Access Policy Division Wireline Competition Bureau)	DA No. 12-433, released March 22, 2012
)	
By)	
)	
Maryland Department of Juvenile Services Billed Entity #: 16025462 FCC Form 471 Application #: 505753 Funding Request #: 1485020)	

To: Office of the Secretary, FCC
Attention: Chief, Wireline Competition Bureau

Application for Review by Full Commission

The Maryland Department of Juvenile Services (“Department”) respectfully requests an application of review by full commission of the March 22, 2012 decision by the Wireline Competition Bureau. The petition for review was dismissed as untimely, because no separate pleading for leave had been filed.

This application of review for reconsideration is based on three principal points which are described in the next paragraphs.

First, while the original request to the Commission upon which the Bureau’s decision was based was titled as a “waiver request,” this titling was based on the decision

of the Universal Services Administrative Company (“USAC”) that appeared to describe the Department’s funding request as in technical violation of FCC rules. However, further research by the Department indicates that it was in compliance with those rules, and so the Bureau could have provided the relief sought by considering the request as an appeal rather than as a waiver request.

Second, the rationale used by the Bureau in denying the Department’s request is not consistent with past FCC precedent. In their decision, the Bureau states:

Juvenile Services posted an FCC Form 470 for the services at issue approximately six months after it had awarded the service contract to Verizon. As Commission rules require that applicants seek bids before entering into contracts with service providers, we find that Juvenile Services violated section 54.503 of the Commission’s rules.¹

The Bureau’s conclusion was consistent with the original denial by USAC which determined that the Department had entered into a contract prior to the “Acceptable Contract Date” that is a part of FCC Form 470. However, the FCC’s own Kalamazoo decision has laid out factors that allow a contract to be obtained prior to that date and still be acceptable for E-rate funding.² The Kalamazoo decision indicates that:

By submitting its FCC Form 470 for posting on the SLD website, as well as waiting for 28 days before signing and submitting an FCC Form 471, [the applicant] adhere[s] to all applicable requirements with respect to the Commission’s competitive bidding policy. In particular, the Bureau concluded that [the applicant] had carefully considered other proposals before choosing to continue service under its existing contract, as required under the Commission’s rules.³

The Commission went on to say that:

We recognize that Kalamazoo was not necessarily required to sign a new contract to satisfy the competitive bidding rules. Instead, the relevant question is whether, after Kalamazoo posted its service for bidding with a

¹ FCC decision at paragraph 8.

² Wireline Competition Bureau decision DA 02-2975, adopted 11-1-02 and released 11-4-02.

³ See Kalamazoo decision, paragraph 5 (footnotes omitted).

Funding Year 1999 FCC Form 470 and waited the 28-day competitive bidding period, it carefully considered all bids before choosing to continue service under its existing contract.⁴

The precedent established by the Kalamazoo decision is sound, for if E-rate applicants were prohibited from seeking funding for contracts that began outside the E-rate competitive bidding period, the effect would be (a) applicants would be severely limited in the time period in which they could enter into technology contracts, and (b) competition would be significantly decreased, since a contract that began outside the competitive bidding period could not be considered even if it was clearly the most cost effective option.

The Department has complied with the requirements specified in the Kalamazoo decision. It filed FCC Form 470 to seek competitive bids and during the required 28-day evaluation period considered any and all bids received. The Department received no bids in response to its Form 470 and therefore was fully justified in selecting to continue its existing contract, which was and is a multi-year contract with renewal options that is compliance with the Department's Form 470 and FCC rules.

The Department's third point is that it emphatically agrees with the Bureau's statement in their denial decision that:

The Commission has repeatedly emphasized the importance of competitive bidding, concluding that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high, thereby minimizing the amount of support needed.⁵

⁴ See Kalamazoo decision, paragraph 6. The Commission also indicates that "applicants who, after a bidding process, choose to continue service under an existing contract need not formally enter into a new contract..."

⁵ See Kalamazoo decision, paragraph 7. This indicates "we believe it would facilitate application processing for applicants to memorialize their decision to continue the service and enter the date of this memorialization as the contract award date of the renewed contract in their FCC Form 471."

Because the Department was not aware of the Kalamazoo decision prior to filing its Form 471, it did not specifically memorialize the decision to continue service under the existing contract and so did not specify the memorialization date as the contract award date on the Form 471. We note, however, that the Commission is providing helpful guidance on this point rather than specifying an actual filing requirement.

The Department wishes to emphasize that it takes these requirements seriously, as well as compliance with the rigorous requirements of the State. The Department could have avoided the appearance of non-compliance if it had been aware of the FCC's suggestion in its Kalamazoo decision to specify a modified contract date in the Form 470. However, E-rate rules and the myriad of additional procedures are quite complex, the use of a modified contract date is only a suggestion by the Commission rather than a requirement and, in fact, it was the Department's desire to provide completely accurate information about the contract award date and all other matters that lead to the USAC and FCC decisions that we ask be overturned in view of the Department's compliance with the precedent established by the Commission's Kalamazoo decision.

Respectfully submitted,

Nancy Seidman

Telecommunications Manager

Maryland Department of Juvenile Services

CC: Gilbert Becker, CIO



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