

**Before the
Federal Communications Commission
Washington, DC**

| | | |
|---|---|---------------------|
| In the Matter of |) | |
| |) | |
| Request for Review of the Decision of |) | |
| the Universal Service Administrator |) | |
| or Waiver and Consolidation by |) | |
| |) | |
| Atlanta Public Schools |) | File No. SLD-819508 |
| Atlanta, Georgia |) | |
| |) | |
| Schools and Libraries Universal Service |) | CC Docket No. 02-6 |
| Support Mechanism |) | |

REQUEST FOR REVIEW OR WAIVER

Atlanta Public Schools (“School District”), by its representative, hereby requests that the Commission review and reverse the Decision of the Administrator (“USAC”) in the above-captioned matter dated March 13, 2012,¹ and instruct USAC to fund the two FY 2011 funding requests in issue.² Alternatively, the School District requests that the Commission reach the same result by waiving its rules.

Request For Consolidation

Additionally, the School District requests that this matter either be consolidated or considered together with the following matter that is currently pending before the Commission on appeal:

- Request for Review of the Decision of the Administrator by Atlanta Public Schools or Waiver
- Submitted and posted on March 2, 2012
- CC Docket 02-6; File No. 762323
- <http://apps.fcc.gov/ecfs/comment/view?id=6017017356>

¹ See Exhibit 1, Funding Commitment Decision Letter

² FRN 2229785 (\$6,483.96 pre-discount amount) and FRN 2229791 (\$119,954.04 pre-discount amount).

Except for the category of service (internal connections versus basic maintenance of internal connections) and the funding year (FY 2010 versus FY 2011), the relevant facts and legal issues are identical. The earlier matter involved funding requests for the purchase and installation of wireless LANs. This one involves funding requests for maintaining those networks. The parties and the competitive bidding process are exactly the same,³ as is USAC's reason for denying funding.

Accordingly, in support of this appeal, the School District hereby incorporates by reference all of the materials submitted previously to the Commission in connection with its March 2, 2012 appeal. For purposes of convenience, we have copied the "Summary" section from that appeal below. Plus, we would like to include one additional comment.

USAC's rationale for denying funding is that E-rate law locks schools and libraries into whatever contracting decisions their scoring matrices happen to yield. Thus selecting a different vendor, for any reason, according to USAC, automatically violates program rules. That cannot possibly be the case.

USAC appears to be operating under the mistaken assumption that it is supposed to be an arbiter of state contracting and procurement issues, and that it is supposed to, in essence, substitute E-rate law and processes for long-standing rules, regulations, case law, and procedures that govern public contracting at the state and local level. But the truth is that neither Congress nor the Commission ever intended for the E-rate program's administrator to operate as if it were a federal, contract appeals board. RFP-related procedural issues, such as whether a school district in Georgia, New York, Montana, Alaska or elsewhere must, in every case, award its contract to the highest scoring vendor, are local ones, and those kinds of issues should be dealt with locally or not at all. Moreover, all issues of federalism aside, USAC possesses neither the expertise nor the resources to take on that kind of mammoth responsibility.

³ USAC refers to the service provider as both PC Specialists, Inc. and Technology Integration Group. The company's official name is PC Specialists, Inc. *d/b/a* Technology Integration Group.

SUMMARY

After evaluating proposals, the School District awarded its wireless networking contract to the highest scoring reseller/installer of Xirrus wireless networking equipment. This vendor was not the highest, but rather the second highest, scoring vendor overall. USAC contends that the School District is not entitled to any E-rate support for that contract because the vendor's proposal did not receive the highest score overall. Once a school or library inserts a scoring matrix into an RFP, USAC explained, E-rate rules leave applicants with no contracting discretion, unless there is a reason to disqualify the top-scoring proposal. If it cannot be disqualified, the school or library is stuck with the result, regardless of the circumstances or the consequences. That uncompromising result, USAC says, is what E-rate rules require. We disagree.

The Commission has never adopted such a hard and fast, unbending rule, and for good reason. Such a rule would unnecessarily reduce the autonomy of applicants to make procurement decisions that best suit their local needs. Moreover, the Commission's policy has never been to permit USAC's administrative interests in procedural and mathematical exactitude to trump the needs of schools and libraries for common sense solutions to their local telecommunications and networking needs.

The School District does not contend that USAC should not have been skeptical. Indeed, when it learned that the highest scorer had not been selected, it had every reason to be. However, once the School District presented substantial, credible evidence to show that its contracting decision made perfect economic, operational and administrative sense, and was not the result of any anti-competitive design, USAC should never have second-guessed it.

Two vendors submitted networking proposals that included Xirrus equipment. The School District selected the vendor whose price was the lower of the two, and, as mentioned previously, whose point total was #2 overall. The School District's Chief Information Officer believed strongly that this was the correct decision because it was clear that the total cost of accepting the #1 point scorer's proposal was going to cost the School District considerably more money over time and was going to be much more

difficult and time consuming to implement. The School District argued to USAC, which USAC noted in its decision and did not dispute, that contracting with the #2 vendor served the best interest of the School District. For USAC though, the issue was simple – the contract had to go to the #1 point scorer.

It is important to keep in mind that procuring goods and services is an art, not a science. That is why there are times, like those here, where after all the dust settles, it becomes clear that the #2 choice is the wiser, more cost-effective one to make. And that is why USAC's decision should be reversed.

If the Commission disagrees, however, and concludes that the School District did violate a rule by contracting with the #2 vendor, then a waiver is certainly warranted. The School District should not be penalized for deciding not to rubber stamp the mathematical outcome of an evaluation review process. The School District's CIO concluded, and, after reviewing his recommendation, the School District's other senior officials involved in the procurement process all agreed, that it did not make good economic, operational, or administrative sense to accept the highest-scoring proposal. Neither state nor local rules prohibited that decision, and despite a great deal of political and partisan uproar at the time, what became perfectly clear at the end of the day was that the procurement process had been perfectly fair and open. And last but not least, the School District selected, exactly as E-rate rules require, the most cost-effective proposal it received.

Respectfully submitted
on behalf of Atlanta Public Schools

/s/ John D. Harrington

John D. Harrington
Chief Executive Officer
Funds For Learning, LLC
2575 Kelley Pointe Parkway – Suite 200
Edmond, OK 73013
405-341-4140
jharrington@fundsforlearning.com

April 3, 2012

Exhibit 1

USAC

Universal Service Administrative Company
Schools and Libraries Division
Correspondence Unit
30 Landex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

TIME SENSITIVE MATERIAL

00272
Randall Sellers
ATLANTA PUBLIC SCHOOLS
130 Trinity Avenue S.W.
Atlanta, GA 30303



Universal Service Administrative Company

Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER
(Funding Year 2011: 07/01/2011 - 06/30/2012)

March 13, 2012

Randall Sellers
ATLANTA PUBLIC SCHOOLS
130 Trinity Avenue S.W.
Atlanta, GA 30303

Re: Form 471 Application Number: 819508
Billed Entity Number (BEN): 127319
Billed Entity FCC RN: 0011961349
Applicant's Form Identifier: AT11-47102

Thank you for your Funding Year 2011 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$359,957.52 is "Approved."
- The amount, \$17,120.45 is "As Yet Unfunded."
- The amount, \$113,145.81 is "Denied."
- The amount, \$2,150,973.00 is "Cancelled."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,
 - Applicant BEN and Service Provider Identification Number (SPIN),

- Form 471 Application Number 819508 as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2011," AND
 - The exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
 4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
 5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal
 Schools and Libraries Division - Correspondence Unit
 30 Lanidex Plaza West
 PO Box 685
 Parsippany, NJ 07054-0685

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
 Universal Service Administrative Company

FUNDING COMMITMENT REPORT
Billed Entity Name: ATLANTA PUBLIC SCHOOLS
BEN: 127319
Funding Year: 2011

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><><> MR2: Some RAL changes could not be processed. Please see your FRN-level comments for additional details regarding why these changes could not be processed.

Form 471 Application Number: 819508
Funding Request Number: 2229784
Funding Status: Not Funded
Category of Service: Internal Connections
Form 470 Application Number: 725030000763016
SPIN: 143006183
Service Provider Name: PC Specialists, Inc
Contract Number: 100109
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2011
Service End Date: N/A
Contract Award Date: 12/22/2009
Contract Expiration Date: 12/31/2014
Shared Worksheet Number: 1379103
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$1,194,470.00
Pre-discount Amount: \$1,194,470.00
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$0.00 - Applicant request
Funding Commitment Decision Explanation: FRN canceled in consultation with the applicant.

FCDL Date: 03/13/2012
Wave Number: 038
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013
Consultant Name: Funds for Learning
Consultant Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: ATLANTA PUBLIC SCHOOLS
BEN: 127319
Funding Year: 2011

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><><> MR2: Some RAL changes could not be processed. Please see your FRN-level comments for additional details regarding why these changes could not be processed.

Form 471 Application Number: 819508
Funding Request Number: 2229785
Funding Status: Not Funded
Category of Service: Basic Maintenance of Internal Connection
Form 470 Application Number: 725030000763016
SPIN: 143006183
Service Provider Name: PC Specialists, Inc
Contract Number: 100109
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2011
Service End Date: N/A
Contract Award Date: 12/22/2009
Contract Expiration Date: 06/30/2012
Shared Worksheet Number: 1379115
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$6,483.96
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$6,483.96
Discount Percentage Approved by the USAC: 80%

Funding Commitment Decision: \$0.00 - Selective - Bidding Violation
Funding Commitment Decision Explanation: DR1: FCC rules mandate fair and open competition and that the winning vendor should be selected with price of the eligible goods and services given the most weight. Even though that process was followed, the winning vendor was not selected in accordance with the process listed in the vendor selection documentation provided during the review, which violates program rules. After scoring all bids, you did not select the bid that received the most points, SmartWave. SmartWave Technologies LLC received nearly five points more than Technology Integration Group, a Xirrus reseller, and in spite of outcome you did not select SmartWave as the winning bid, which is a violation of program rules. SmartWave was not disqualified from the bid, and therefore, after receiving the most points in the evaluation, and in accordance with program rules, should have been awarded the contract. Applicants have significant latitude in developing the bid evaluation criteria, as long as price of the eligible goods and services is the primary factor. However, after determining those criteria and scoring the bids, the applicant must abide by the outcome of that review process and cannot then change the outcome at will even if, as you stated, you believed that the decision to change the award was in the best interest of the district. Furthermore, the RFP for these requests mirrors language taken from the Xirrus website. Specifically, RFP Section 3.3 titled Priorities is a near exact copy of the Guide for Designing a Wi-Fi Network from the Xirrus website. Copying the RFP requirements from a vendor's website signals to other bidders that the district may have already reached a conclusion about the outcome of the competitive bidding process before it has run, and compromises the fair and open competitive bidding process required by FCC rules. Accordingly, the FRN is denied.

FCDL Date: 03/13/2012
Wave Number: 038
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013
Consultant Name: Funds for Learning
Consultant Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: ATLANTA PUBLIC SCHOOLS
BEN: 127319
Funding Year: 2011

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><><> MR2: Some RAL changes could not be processed. Please see your FRN-level comments for additional details regarding why these changes could not be processed.

Form 471 Application Number: 819508
Funding Request Number: 2229788
Funding Status: Funded
Category of Service: Basic Maintenance of Internal Connection
Form 470 Application Number: 256860000796875
SPIN: 143033662
Service Provider Name: Onepath Systems, LLC
Contract Number: 011310
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2011
Service End Date: N/A
Contract Award Date: 07/13/2010
Contract Expiration Date: 06/30/2012
Shared Worksheet Number: 1379103
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$399,952.80
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$399,952.80
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$359,957.52 - FRN approved as submitted

FCDL Date: 03/13/2012
Wave Number: 038
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013
Consultant Name: Funds for Learning
Consultant Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: ATLANTA PUBLIC SCHOOLS
BEN: 127319
Funding Year: 2011

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><> MR2: Some RAL changes could not be processed. Please see your FRN-level comments for additional details regarding why these changes could not be processed.

Form 471 Application Number: 819508
Funding Request Number: 2229789
Funding Status: As Yet Unfunded
Category of Service: Basic Maintenance of Internal Connection
Form 470 Application Number: 256860000796875
SPIN: 143033662
Service Provider Name: Onepath Systems, LLC
Contract Number: 011310
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2011
Service End Date: N/A
Contract Award Date: 07/13/2010
Contract Expiration Date: 06/30/2012
Shared Worksheet Number: 1379115
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges:
Annual Pre-discount Amount for Eligible Non-recurring Charges:
Pre-discount Amount:
Discount Percentage Approved by the USAC: 80%
Funding Commitment Decision:

FCDL Date: 03/13/2012
Wave Number: 038
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013
Consultant Name: Funds for Learning
Consultant Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: ATLANTA PUBLIC SCHOOLS
BEN: 127319
Funding Year: 2011

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><><> MR2: Some RAL changes could not be processed. Please see your FRN-level comments for additional details regarding why these changes could not be processed.

Form 471 Application Number: 819508
Funding Request Number: 2229790
Funding Status: Not Funded
Category of Service: Internal Connections
Form 470 Application Number: 211720000677456
SPIN: 143022163
Service Provider Name: DISYS Solutions, Inc
Contract Number: 100608
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2011
Service End Date: N/A
Contract Award Date: 01/27/2009
Contract Expiration Date: 06/30/2012
Shared Worksheet Number: 1379103
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$1,195,500.00
Pre-discount Amount: \$1,195,500.00
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$0.00 - CANCELED due to RAL request.
Funding Commitment Decision Explanation: FRN canceled in accordance with a RAL request submitted by Randall Sellers received on 04-19-2011.

FCDL Date: 03/13/2012
Wave Number: 038
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013
Consultant Name: Funds for Learning
Consultant Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: ATLANTA PUBLIC SCHOOLS
BEN: 127319
Funding Year: 2011

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><><> MR2: Some RAL changes could not be processed. Please see your FRN-level comments for additional details regarding why these changes could not be processed.

Form 471 Application Number: 819508
Funding Request Number: 2229791
Funding Status: Not Funded
Category of Service: Basic Maintenance of Internal Connection
Form 470 Application Number: 725030000763016
SPIN: 143006183
Service Provider Name: PC Specialists, Inc
Contract Number: 100109
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2011
Service End Date: N/A
Contract Award Date: 12/22/2009
Contract Expiration Date: 06/30/2012
Shared Worksheet Number: 1379103
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$119,954.04
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$119,954.04
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$0.00 - Selective - Bidding Violation
Funding Commitment Decision Explanation: DRI: FCC rules mandate fair and open competition and that the winning vendor should be selected with price of the eligible goods and services given the most weight. Even though that process was followed, the winning vendor was not selected in accordance with the process listed in the vendor selection documentation provided during the review, which violates program rules. After scoring all bids, you did not select the bid that received the most points, SmartWave. SmartWave Technologies LLC received nearly five points more than Technology Integration Group, a Xirrus reseller, and in spite of outcome you did not select SmartWave as the winning bid, which is a violation of program rules. SmartWave was not disqualified from the bid, and therefore, after receiving the most points in the evaluation, and in accordance with program rules, should have been awarded the contract. Applicants have significant latitude in developing the bid evaluation criteria, as long as price of the eligible goods and services is the primary factor. However, after determining those criteria and scoring the bids, the applicant must abide by the outcome of that review process and cannot then change the outcome at will even if, as you stated, you believed that the decision to change the award was in the best interest of the district. Furthermore, the RFP for these requests mirrors language taken from the Xirrus website. Specifically, RFP Section 3.3 titled Priorities is a near exact copy of the Guide for Designing a Wi-Fi Network from the Xirrus website. Copying the RFP requirements from a vendor's website signals to other bidders that the district may have already reached a conclusion about the outcome of the competitive bidding process before it has run, and compromises the fair and open competitive bidding process required by FCC rules. Accordingly, the FRN is denied.

FCDL Date: 03/13/2012
Wave Number: 038
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013
Consultant Name: Funds for Learning
Consultant Number (CRN): 16024808
Consultant Employer: Funds for Learning