

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver and Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Asbury Park Public Library,)	SLD File No. 229937
Asbury Park, New Jersey)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

APPLICATION FOR REVIEW

Pursuant to section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, the Asbury Park Public Library (hereinafter Library) hereby requests Commission review of the Wireline Competition Bureau’s March 14, 2012 decision in the above-captioned matter¹. As shown herein, the Bureau’s decision has no factual basis, is contrary to Commission precedent, and reflects fundamental procedural errors. It should accordingly be reversed in its entirety or, at a minimum, remanded to the Bureau for further review.

1. BUREAU ERROR RE FILING DEADLINES

In the letter accompanying a copy of Order DA 12-403 the Library was advised that an appeal of the decision must be filed within 30 days from the released date of the decision. This

¹ Requests for Waiver and Review of Decisions of the Universal Service Administrator by Networks & More! Inc., *et al.*, Order, DA-12-403 (rel. March 14, 2012) (*Order*). The Asbury Park Public Library is a municipal free public library organized under relevant New Jersey Statutes. Billed Entity Number is 12292 and Billed Entity FCC RN is 001181125.

information appears to be erroneous. We contacted the author of the letter who confirmed his claim that 30 days was the time period for the appeal²

At 47 C.F.R. 54.720 (a), (b), and (d) it states:

(a) An affected party requesting review of an Administrator decision by the Commission pursuant to §54.719(c), shall file such a request within sixty (60) days of the issuance of the decision by a division or Committee of the Board of the Administrator.

(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to §54.719(a), shall file such request within sixty (60) days of issuance of the decision by the division.

(d) The filing of a request for review with a Committee of the Board under §54.719(a) or with the full Board under §54.719(b), shall toll the time period for seeking review from the Federal Communications Commission. Where the time for filing an appeal has been tolled, the party that filed the request for review from a Committee of the Board or the full Board shall have sixty (60) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

Further in *Agra Public Schools I-134 et al* the issue of filing deadlines was treated comprehensively:

² Letter from Trent Harkrader, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC (dated March 14, 2012) to Robert W. Stewart, Director, Asbury Park Public Library. See Exhibit A. Confirmed by email from Trent Harkrader (dated April 11, 2012, 19:26hrs EDST). See Exhibit B.

“...Unlike the application process however, the procedures for filing an appeal are straightforward. Each applicant is advised of the deadline and the procedure for filing an appeal when it receives a denial of or reduction of its funding commitment. Moreover, in the *Schools and Libraries Second Report and Order*, the Commission took steps to ensure the manageability of the appeals process for applicants. Specifically, the Commission permanently extended to 60 days the time for filing an appeal with USAC or the Commission, noting that, because many E-rate applicants ‘have no experience with regulatory filing processes,...the 30-day time period is often not adequate to allow potential petitioners to gather the documents and synthesize the arguments needed to file pleadings in order to challenge funding decisions’.”³

Order DA 12-403 denied 15 appeals involving a vendor, a number of school districts, and two public libraries. The libraries, as were the schools, were customers of the named vendor. However, the two libraries were participants in a special, corporate funded, technology development project whereby the New Jersey Natural Gas Company, a local utility, provided financial support to supplement E-rate and library funding and made available members of their information technology staff to assist the libraries, which included some other libraries also. New Jersey Natural Gas employees worked closely with vendor Networks and More as well as the library resulting in a three-way relationship that makes the situation in this case more complex than normal. The company employed Networks and More as a consultant to assist with the implementation of their “Libraries Online” project.

³ *Request for Review by Agra Public Schools I-134 et al of Decision of USAC Administrator*. File No. SLD-363747 et al, CC Docket No. 02-6, *Order* (May 26, 2010), at paragraph 8.

Having to adhere to a 30 day rather than a 60 day filing deadline adversely affects and prejudices the library's ability to produce a thorough and effective challenge to the Bureau's denial of appeal. Thirty days does not give us the time necessary to confer with the company officials and for them to retrieve records from off-site storage, let alone review those records. Thus we are unable to describe the special role of the company in this matter and delineate their relationship with the vendor and how the E-rate filing process was impacted by the company's involvement.

2. FORM 470 AND COMPETITIVE BIDDING ISSUES

As library director I have handled E-rate applications for the entire 14-year span of the program and the library has filed applications every one of those years. With regard to the 470 in question which USAC claimed contained vendor contact information instead of library information we immediately point out that their claim was in error and that the library and my name as director were listed as the contact on the 470, 471, 486, 472 forms and the certifications therefor; and that every place a signature was needed I signed. USAC ignored the *prima facie* evidence that the 470 itself provided and continued through several levels of review and appeal to ignore the fact that their original determination was based on a rather egregious mistake.

In addition to my restating that the library was the 470 contact I can state the following regarding other aspects of the competitive bidding process as it relates to this 470:

- (1) Library complied with all FCC competitive bidding rules and requirements
- (2) Form 470 was timely filed and remained posted a minimum of 28 days
- (3) Any inquiries from potential bidders would be received by the director, as contact person, at the library address

(4) The evaluation of bids and awarding of contracts was completely in the control of and in the hands of the library who solely made these decisions

(5) The library did not delegate any competitive evaluation role to any other person or agency

(6) The library did not abdicate control over any aspect of the application process to any other person or agency

(7) The relationship that existed between the vendor and applicant did not unfairly influence the outcome of the competitive bidding process

(8) Cognizant of the existing involvement with a vendor the library made a special effort to establish and maintain an arms-length relationship with said vendor to insure a fair, open, and competitive bidding process.

We can further state that for most items there were no bidders. For network maintenance there was only one bid, despite the library's extensive search to recruit other vendors for this service in order to find a vendor that offered a lower hourly service charge. It is my personal opinion that at the time USAC rules, procedures, policies, and reimbursement systems together with the funding and size of the library discouraged potential vendors from bidding and wanting to participate in the E-rate program. Thus over the life of our involvement with E-rate it has been the norm that many 470s attract no bids and a few receive one bid. In the case at point here the library did everything possible to promote and encourage competitive bidding.

3. CONCLUSION AND REQUEST FOR RELIEF

The rules and guidelines for competitive bids and service provider-applicant relationships are set forth at 47 C.F.R. 54.504 and in two documents on the USAC website: “Proper Service Provider Assistance to Applicants” found at www.usac.org/sl/providers/step01/proper-service-provider-assistance.aspx and “Inappropriate Roles for Service Providers” found at www.usac.org/providers/step01/inappropriate-roles-providers.aspx. There is no evidence whatsoever that in the case of this Form 470, or indeed for the whole length of the library’s relationship with the named vendor, that either party was in less than full and complete compliance with these rules and guidelines.

We are aware of the Commission’s commitment to guarding against waste, fraud, and abuse and to ensuring that e-rate funds are used for appropriate and eligible purposes and just as there is no evidence that the competitive bidding process was jeopardized in this case, likewise there is no evidence of waste, fraud, and abuse or any failure to adhere to core program requirements.

Therefore, for the reasons set forth above, the library respectfully requests reconsideration of the Division’s *Order* and a grant of the appeal of the USAC order specified above.

Respectfully submitted by,

Robert W. Stewart, Director

Asbury Park Public Library

500 First Avenue

Asbury Park, New Jersey 07712

Phone: 732-774-4221

Fax: 732-988-6101

rstewart@asburyparklibrary.org

April 13, 2012

EXHIBIT A

Letter from Trent Harkrader, Chief, Telecommunications Access Policy Division,
Wireline Competition Bureau, FCC (dated March 14, 2012) to Robert W. Stewart, Director,
Asbury Park Public Library



Federal Communications Commission
Washington, D.C. 20554

Memo

To: Robert Stewart
Asbury Park Free Public Library

From: Trent Harkrader, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission

Date: March 14, 2012

Re: DA No. 12-403, released March 14, 2012

Please find accompanying this memo the Bureau's decision on your appeal. The accompanying decision may be referenced in the future by its proceeding number and release date: DA No. 12-403, Released March 14, 2012.

If the Bureau has granted your appeal, please contact the Universal Service Administrative Company (USAC) at 1-888-203-8100 for more information regarding your application. Please submit any information to USAC that the order may require. Once USAC has reviewed your application related to the issues resolved in the attached letter, you will receive a revised funding commitment decision letter.

If you choose to seek consideration by the Commission of the Bureau's decision, a petition for reconsideration or an application for review must be filed with the Commission within 30 days from the released date of this decision. You may file your request electronically using the Internet by accessing the Commission's electronic comment filing system (ECFS) at <http://efiling.fcc.gov/ecfs2/>. Please be sure to include CC Docket No. 02-6 on your filing.

Click Preview to Open Full Document

EXHIBIT B

Trent Harkrader, Email - Clarification / Confirmation of Appeals Filing Deadlines (dated April 11, 2012 19:26hrs EDST) to Malakia Oglesby, Technician/MIS, Asbury Park Public Library

Malakia Oglesby

Subject: RE: Clarification of Appeals Deadlines

From: Trent Harkrader [<mailto:Trent.Harkrader@fcc.gov>]

Sent: Wednesday, April 11, 2012 7:26 PM

To: 'Malakia Oglesby'

Subject: RE: Clarification of Appeals Deadlines

Ms. Oglesby –

Thanks for your question. In order to seek review of the Order you received (DA No. 12-403), you must file your request with the Federal Communications Commission within 30 days. The other deadline you refer to in your e-mail relates to the deadline by which a party must seek review of a decision by the Administrator of the E-rate program, which is the Universal Service Administrative Company. That deadline is 60 days. I hope this helps.

Best regards,

Trent B. Harkrader
Chief, Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street S.W., Room 5-A426
Washington, DC 20554
Phone: (202) 418-2955

EXHIBIT C

Schools and Libraries Universal Service Description of Services Requested and
Certification Form / Form 470, Allowable Contract Date 01/04/2001, Asbury Park Public
Library

470

**Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**

Estimated Average Bidder Hours Per Response, 50 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before completing.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications
(School, library, or consortium desiring Universal Service funding)

Form 470 Application Number: 474750000309146
Applicant's Form Identifier: 301
Application Status: CERTIFIED
Posting Date: 12/07/2000
Allowable Contract Date: 01/04/2001
Certification Received Date: 12/11/2000

1. Name of Applicant: ASSBURY PARK FREE PUB LIBRARY			
2. Funding Year: 07/01/2001 - 06/30/2002		3. Your Entity Number 122972	
4. Applicant's Street Address, P.O.Box, or Route Number			
a. Street 500 1ST AVE			
City ASSBURY PARK	State NJ	Zip Code 5Digit 07712	Zip Code 4Digit 0117
b. Telephone number (732) 774-4221		c. Fax number () -	
d. E-mail Address			
5. Type Of Applicant (Check only one box)			
<input checked="" type="checkbox"/> Library (including library system, library branch, or library consortium applying as a library)			
<input type="checkbox"/> Individual School (Individual public or non-public school)			
<input type="checkbox"/> School District (LEA; public or non-public [e.g., diocesan] local district representing multiple schools)			
<input type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia)			
6a. Contact Person's Name: Robert Stewart			
6b. Street Address, P.O.Box, or Route Number (if different from item 4)			
<input checked="" type="checkbox"/> 500 1ST AVE			