AdTec
Administrative & Technical Consulting, Inc.

Exhibit A

February 23, 2012

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

Appellant/Organization Name: St. Joseph County Public Library BEN 130399
Contact Name: Tammy Condon
Telephone Number: 574-329-5357
Fax Number: 281-664-3734
E-mail address: tammy@admtec.com
Relationship of the Contact Person: Consultant (LOA is included)
Alternate Contact Person: Charlie Hobbs
Telephone Number: 765-855-1612
Fax Number: 765-855-1615
Email: chobbs@admtec.com

This is a letter of Appeal.

APPEAL – Funding Commitment Decision
FRN: 2224209
Form 471 Application Number: 817673
Billed Entity Name: St. Joseph County Public Library
Billed Entity Number (BEN): 130399
Billed Entity FCC RN: 0008384182
Applicant Form Identifier: 2011-319
Service Provider Identifier Numbers (SPIN): 143004642

I am appealing the Funding Commitment Decision of $0.00 for ***FRN 2224209*** which was denied because "The Form 470 cited does not define the specific locations associated with the funding request. You did not provide this information to a potential bidder as requested during the 28-day waiting period. The information sought was necessary to submit a responsive bid since the From 470 was not sufficiently detailed with this information. Because you did not provide this pertinent information to a potential bidder, you did not conduct a fair and open competitive bidding process and funding is denied."

Rationale:

It is my understanding that this denial is a result of a whistleblower claim by Trumpet Networks. It has always been our practice to communicate with service providers and answer questions until the Fall 2010 Applicant trainings which was attended September 30, 2010. The Senior Management of USAC conducted a presentation on the *6th Report and Order* covering the codification of the competitive bidding process. As a result of this training it was my belief that there was a new strict interpretation of how communication was to be handled with service providers. The posted 470 did not interfere with the competitive bidding process as evidenced by the receipt of two (2) bids and my past experience with Trumpet Networks (see Exhibit C). A fair and competitive bidding process was conducted per FCC rules and USAC procedures in effect at the time of the posting of the 470 and during the 28 day posting period. The following exhibits are offered as proof that all FCC rules and USAC directives for 470 filings were followed, and a fair and competitive bidding process was conducted.

- Exhibit A - Fall 2010 Applicants Training PowerPoint– The training provided by USAC senior management stressed that with the adoption of the Sixth Report and Order "all potential bidders must have access to the same information and must be treated in the same manner throughout the procurement process." "Additions or modifications to the Form 470/RFP must be made available at the same time and in a uniform manner to all potential bidders." No specific examples/guidance were provided by the USAC senior management team at the training as to how these standards were to be implemented. I believed that the best way to make sure the playing field was level for all potential bidders was to insist they use the posted 470 as a basis for their bid. The posted 470 did meet the standard of containing enough detail for vendors to identify the **desired services** and to formulate bids. I did indicate the number of locations, but the additional burden of actually providing the locations was not clear as a posting requirement. My colleagues have used this style of posting since the inception of the E-Rate program and vendors have been perfectly capable of submitting complete and winning bids, as we show in detail in Exhibit C of this letter.
- Exhibit B - October 1, 2010 News Brief– Highlights the *Sixth Report and Order* Competitive Bidding which affirm the Applicant Training material receive September 30, 2010. Again no guidance is made as to how "all potential bidders must have access to the same information and must be treated in the same manner throughout the procurement process." "Additions or modifications to the Form 471/RFP must be made available at the same time and in a uniform manner to all potential bidders." These statements led me to the conclusion that the best source of information for the **services** requested for potential bidders was the actual posted 470.
- Exhibit C - 470 #410030000803747 – This posting is very similar in **service** to the establishing 470 for Saint Joseph County Public Library. In my investigation I never found any correspondence where Trumpet Networks ask or received the locations of the sites being served. Thus, Trumpet Networks has established a past practice of being able to submit bids based on similar 470 posting that do not list specific locations. As a result of this posting and their bid submission Trumpet Networks was awarded the contract for the **service**.
- Exhibit D – November 19, 2010 News Brief – Provides guidance about responding to questions from potential bidders by stating "...must be able to provide clear and accurate information about their needs to potential service providers so that these providers can prepare responsive bids. Generic or "encyclopedic" lists of products and services do not reflect accurate information about the particular services requested violate program rules" The posted 470 was not a "generic or "encyclopedic" lists of products and services." This USAC directive did not give guidance for an acceptable means for "all potential bidders must have access to the same information and must be treated in the same manner throughout the

procurement process." "Additions or modifications to the Form 470/RFP must be made available at the same time and in a uniform manner to all potential bidders."

- Exhibit E – December 3, 2010 News Brief - I continued to monitor guidance from USAC through the weekly News Brief. The first guidance was provided December 3, 2010 when USAC provides "...some examples of acceptable and unacceptable descriptions:" These examples do not lead a reasonable and prudent reader to the conclusion that a specific list of locations is required to be listed in the 470/RFP. Note this guidance provided by USAC was after the allowable contract date on the establishing 470 for Saint Joseph County Public Library.
- Exhibit F – January 7, 2011 News Brief – Indicated some program rules and requirements have changed and references the reader to the FCC *Sixth Report and Order* and the October 1, 2010 SL News Brief. Concerning the competitive bidding process the change involves "all potential bidders must have access to the same information and must be treated in the same manner throughout the procurement process." "Additions or modifications to the Form 470/RFP must be made available at the same time and in a uniform manner to all potential bidders." Again, USAC does not provide guidance to applicants as to how to comply with these requirements.
- Exhibit G – January 28, 2011 News Brief – This News Brief addresses "How specific should I be about the scope of my project." A reasonable and prudent reader of this information would not reach the conclusion that the listing of specific locations is a requirement of a 470 posting especially when one reads, "**That does not mean, however, that you have to be overly specific**... you can enter "For my entire school district"...
- Exhibit H – February 4, 2011 News Brief – This New Brief has an extensive discussion of the Form 470 application process. A reasonable and prudent reader of this information would not reach the conclusion that the listing of specific locations is a requirement of a 470 posting. Also note there is no guidance provided as to how ro fulfill the new requirements of the *Sixth Report and Order* of "all potential bidders must have access to the same information and must be treated in the same manner throughout the procurement process." "Additions or modifications to the Form 470/RFP must be made available at the same time and in a uniform manner to all potential bidders." This News Brief provided the last guidance from USAC before the 470 window closed February 24, 2011.
- Exhibit I - September 26, 2011 Letter from USAC with responses –States that "Concerns were recently brought to USAC's attention ...Information has been provided to USAC indicating your Form 470 was lacking in pertinent information and that potential bidders contacted you seeking information about the services however, the information was not provided. The information provided to USAC indicates the Form 470 seeks WAN connectivity but does not provide the addresses of the locations to be connected. This makes it difficult for potential bidders to provide an accurate quote." If this is the case then why were **two** bids received? It seems what would hold true to one potential bidder would hold true for all potential bidders. Saint Joseph County Public Library is a public entity and maintains a website that lists the specific addresses for their sites. This information was readily available to any potential bidder as it was for the **two** that actually submitted bids, as well as, Trumpet Networks. The two bids received were from AT&T and Comcast.
- Exhibit J – January 13,2012 News Brief - This News Brief has similar information as the November 19, 2011 (Exhibit D) but with much more complete guidance such as, "Not responding to a potential bidder can result in a compromised competitive bidding process which can result in funding denial." **And** "An applicant may choose to post questions received from potential bidders along with the applicant's answers on the applicant's website. Doing so would ensure that all potential bidders have access to the same information – a key component in a fair and open competitive bidding process." This New Brief provides

evidence that past USAC guidance has been incomplete and is in need of further development as provided in the News Brief.

After review of this appeal I respectfully request USAC find that St. Joseph County Public Library complied with the Commission's competitive bidding requirements for the FRN at issue, and it is in the public interest to provide the requested relief. Saint Joseph County Public Library serves over 170,000 patrons. To lose funding for FRN 2224209 may force the library to reduce hours, restrict new material acquisition, and/or patron programs. Specifically, I request USAC find that St. Joseph County Public Library's FCC Forms 470 contained enough detail for vendors to identify the desired services and to formulate bids. Thus, all bidders were on a level playing field despite the petitioners' failure to list locations of sites. This determination by USAC would be consistent with past FCC rulings concerning the competitive bidding process. I further request that the funding commitment of $55,007.46 be fully restored for FRN 2224209.

Thank you for your consideration of this appeal.

Respectfully submitted,

Tammy Condon, Erate Contact
St. Joseph County Public Library