Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 02-6
Request for Review of Decision of the Universal Service Administrator	)	
By Encinitas Union School District	)	File No. SLD 800921
	)	FRN 2178032

To: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW

Paul C. Besozzi
Carly T. Didden
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6000

Counsel for Encinitas Union School District

Dated: September 19, 2013

SUMMARY

This Request For Review ("Request") relates to a Notification of Commitment Adjustment Letter ("COMADs") served on the Encinitas School District ("EUSD" or "District") to recover Funding Year ("FY") 2011 support provided under the Schools and Libraries Support Mechanism ("E-Rate Program" or "Program"). The COMAD is based on alleged violations in the competitive bidding process for FY 2008 support for a four-year contract with AT&T, through its affiliates Pacific Bell Telephone Company and AT&T Corp, for eligible Priority 1 telecommunications services, specifically voice, data and long distance services. USAC issued COMADs for FYs 2008-2011 for various Funding Request Numbers ("FRN") on about March 11, 2013. The COMADs for the FYs after 2008 were based on the premise that the alleged violations in the original FY 2008 competitive bidding process infected all subsequent requests for Program support citing to the FCC Form 470 (#781580000630176) pursuant to which the FY 2008 competitive bidding process was conducted and the multi-year contract was awarded. On May 10, 2013, the District filed a Consolidated Request For Review of seven (7) separate COMADs covering various FRNS relating to support for this period (i.e., FYs 2008-2011)("Consolidated Request").

The COMAD which is the subject of this Request apparently was to have been part of the group of COMADs issued on March 11. Indeed, the COMAD indicates that it was mailed, along with the others, on that date but apparently did not reach the District, so it has been reissued on August 27, 2013. The District requests that this Request be considered in conjunction with action on the Consolidated Request.

As was the case with the previous COMADs, the District respectfully submits that it conducted a fair and open competitive bidding process for FY 2008 in accordance with the Federal Communications Commission's ("FCC") E-Rate Program rules. The COMAD does not specify what provisions of "Californias [sic] procurement laws" were violated. To the extent that assertion is

based on Section 20118.2 of the California Procurement Code, the claim is misplaced. The District's original detailed Request For Proposals ("RFP") incorporated the E-Rate Program rule requirements and, thus, all potential bidders were on notice of the evaluation requirements incorporated in those rules (e.g., price being required to be the highest weighted factor). The District selected the lowest priced bidder, a service provider with extensive experience participating in the E-Rate Program. All bidders were on a level playing field. There is no evidence that there was any inconsistency or confusion about the bid evaluation criteria that would have provided one bidder an advantage and would justify requiring recovery of the support provided for FYs 2008-2011. Any inconsistency between bidding evaluation factors listed in the RFP and the FY 2008 E-Rate RFP Assessment Worksheet did not cause confusion or interfere with the competitive bidding process. Moreover, the winning bidder proposed to provide its services pursuant to the previously competed State Master Contract Calnet 2. So, the District, under established Commission precedent, did not need to conduct a competitive bidding process through an FCC Form 470 to order services from Calnet 2.

Even if the Commission were to conclude that there had been technical violations of its E-Rate Program rules, the totality of the circumstances in this case justifies a waiver of any shortfalls in the District's FY 2008 competitive bidding process and rescission of the COMAD. Again, there is no evidence that any bidder was at a disadvantage. All potential bidders had access to the same information. There is no evidence of any waste, fraud or abuse or intent to evade the E-Rate Program rules. The requirement for recovery of these funds, which were properly expended in accordance with USAC's approval, would only cause a financial hardship for the District and under the circumstances would not serve the fundamental purposes of the E-Rate Program. Therefore, a limited waiver of the E-Rate Program rules is justified and for this additional reason this COMAD should be rescinded.

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In the Matter of	)	
	)	**CC Docket No. 02-6**
Request for Review of Decision of the Universal Service Administrator	)	
	)	
By Encinitas Union School District	)	**File Nos. SLD 800921**
	)	**FRN 2178032**

To: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW

On behalf of the Encinitas Union School District ("EUSD" or "District"), this is a request for review ("Request") of the decision of the Administrator of the Universal Service Administrative Company ("Administrator") reflected in the Notification of Commitment Adjustment Letter ("COMAD") attached as Exhibit 1.[1] This COMAD was apparently intended to be included in a series of such Notifications, issued on March 11, 2013, seeking to recover certain Schools and Libraries Support Mechanism ("E-Rate Program" or "Program") support provided to the District for Funding Years ("FYs") 2008-2011 ("Prior COMADs"). On May 10, 2013 the District timely sought Commission review of those USAC decisions in a Consolidated Request For Review which

[1] The Administrator, the Universal Service Administrative Company and the Schools and Libraries Division ("SLD") thereof will be collectively referred to herein as "USAC". This Request is timely filed. Section 54.720(b) of the Commission's E-Rate Program rules requires such a filing be made "within sixty (60) days of issuance" of a decision by USAC. The COMAD is dated August 27, 2013, and sixty (60) days thereafter is Saturday, October 26, 2013, a holiday for FCC purposes so the filing is due Monday, October 28, 2013.

remains pending ("Consolidated Request"). A copy of the Consolidated Request is attached as Exhibit 2.

As was the case with the Prior COMADs, the COMAD at issue here is based on alleged violations in the competitive bidding process for FY 2008 for a four-year contract for eligible Priority 1 telecommunications services, specifically voice, data and long distance telephone services. The District selected AT&T, through its affiliates Pacific Bell Telephone and AT&T Corp, to provide the services pursuant to terms and conditions negotiated as part of a State Master Contract, Calnet 2. The COMADs for subsequent FYs (i.e., FYs 2009-2011) are based on the premise that the alleged violations in the original FY 2008 competitive bidding process infected all subsequent requests for Program support citing the FCC Form 470 (#781580000630176) pursuant to which the FY 2008 competitive bidding process was conducted and the multi-year contract was awarded. The substance of the Funding Commitment Adjustment Explanation in this case is identical to that set forth in the Prior COMADs.

I. FOR ALL THE REASONS SET FORTH IN THE CONSOLIDATED REQUEST THE COMAD SHOULD BE RESCINDED

The COMAD seeks rescission of $1,127.40 in E-Rate support for FY 2011 under Form 471 Application No. 800921 and Funding Request No. ("FRN") 2178032, of which $715.03 was disbursed. The Consolidated Request covers another FRN (217967) under the same FCC Form 471 Application involving the same contract (Calnet 2 MSA -2). See Exhibit 1 to Consolidated Request.

The reasons for rescinding the COMAD at issue here are fully addressed in the Consolidated Request and the District hereby incorporates by reference in their entirety the arguments set forth therein.

II. CONCLUSION AND REQUEST FOR RELIEF

The District respectfully submits that the COMAD is unwarranted and should be rescinded. It issued a detailed RFP and selected the lowest price bidder, consistent with the E-Rate Program requirement to give the price factor the highest weight. Also, there was no violation of Section 20118.2 of the California Procurement Code or any other California procurement law. USAC has failed to establish any violations of the E-Rate Program rules in effect at the time of this procurement relating to evaluation factors. The District conducted a fair and open competitive bidding process. Further, in the event that the Commission concludes that there have been technical violations, a limited waiver of the E-Rate Program rules is justified under these circumstances. There is no evidence of waste, fraud, abuse, or failure to comply with the core program requirements. Unintended errors where the District made a good faith effort to comply with FCC rules and California procurement law should be considered procedural in nature, not a justification for the COMAD. For all of the foregoing reasons, the District respectfully submits that the FCC should direct that the COMAD be rescinded. Finally, in light of the pendency of the Consolidated Request, the District requests that consideration of this Request be considered in conjunction with action on the Consolidated Request.

Respectfully submitted,

Paul C. Besozzi
Carly T. Didden
Patton Boggs LLP
2550 M Street N.W.
Washington, DC 20037
(202) 457-6000
Counsel to Encinitas Union School District

Dated: September 19, 2013

DECLARATION

I, David D. Delacalzada, am the Director, Information Technology for Encinitas Unified School District ("District"). I have served in this position since December 8, 2009. As such I am responsible for the general oversight over the District's participation in the Schools and Libraries Support Mechanism ("E-Rate Program"). I participated in the USAC Internal Audit Division audit of the District in 2012 and I am familiar with the issues raised in the context of that audit and the subsequent March 11, 2013 and August 27, 2013 Notification of Commitment Adjustment Letters.

I have reviewed the foregoing Request For Review ("Request"), which was prepared at my request and under my supervision and control. I declare under penalty of perjury that the factual statements and representations concerning the District and the conduct of the competitive bidding process for FY 2008 set forth in the Request are true and correct to the best of my knowledge and belief.

David D. Delacalzada

Dated: September 19, 2013

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 19th day of September, 2013, a copy of the foregoing "Request For Review" has been served via electronic mail or first class mail, postage pre-paid, to the following:

Julie Veach
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Julie.Veach@fcc.gov

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Legal Advisor to the Bureau Chief
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Letter of Appeal
Schools and Libraries Division-
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Carly T. Didden

EXHIBIT 1

USAC
Universal Service Administrative Company

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2011: July 1, 2011 - June 30, 2012

August 27, 2013

Sher Hoff
ENCINITAS UNION ELEM SCH DIST
101 S. Rancho Santa Fe Road
Encinitas, CA 92024

Re: Form 471 Application Number:	**800921**
Funding Year:	**2011**
Applicant's Form Identifier:	**EUSD-471-14**
Billed Entity Number:	**143637**
FCC Registration Number:	**0014168363**
SPIN:	**143001192**
Service Provider Name:	**AT&T Corp.**
Service Provider Contact Person:	**Linda Doyle**

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Linda Doyle
AT&T Corp.

TO APPEAL THIS DECISION:

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

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received 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 email address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
•Billed Entity Name,
•Form 471 Application Number,
•Billed Entity Number, and
•FCC Registration Number (FCC RN) from the top of your letter.

3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. 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 an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a 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 us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

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 on 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.

Funding Commitment Adjustment Report for
Form 471 Application Number: 800921

Funding Request Number:	2178032
Services Ordered:	TELCOMM SERVICES
SPIN:	143001192
Service Provider Name:	AT&T Corp.
Contract Number:	Calnet 2 MSA-2
Billing Account Number:	339-341-9793
Site Identifier:	143637
Original Funding Commitment:	$1,127.40
Commitment Adjustment Amount:	$1,127.40
Adjusted Funding Commitment:	$0.00
Funds Disbursed to Date	$715.03
Funds to be Recovered from Applicant:	$715.03

Funding Commitment Adjustment Explanation:

Our records show this letter was mailed to you on 3/11/2013. It appears this letter may have not reached you, so it has been reissued with a date of 8/27/2013. This date will begin your 60 day window to appeal the decision.

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On the FY 2007 FCC Form 470, you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During an audit, it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. This determination was based on the auditors finding that bid evaluation sheets provided by the applicant, did not identify the significant bid evaluation factors and their relative importance in the Request for Proposal (RFP) in funding years 2007 and 2008. The applicant did not identify the importance of each factor in evaluating the potential bids as required by Californias procurement laws and the evaluation factors in the RFP for FY2008 did not match the evaluation factors that were on the applicants E-rate RFP Assessment Worksheet. FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services ordered, and by submitting a complete description of services requested so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws, you violated the competitive bidding process. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.