

Before The
Federal Communications Commission
Washington, D.C.

In the Matter of)	
)	
Request for Review by Wheeling School District 21 of the Funding Decision of the Universal Service Administrator)	CC Docket No. 02-6
)	
)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service Service Support Mechanism)	Wheeling School District 21 2012 Funding Year 471 Applications 853298, 854902, 854925, and 853285
)	

REQUEST FOR REVIEW BY WHEELING SCHOOL DISTRICT 21 OF FUNDING DECISIONS OF THE UNIVERSAL SERVICE ADMINISTRATOR

Wheeling School District 21 (the “District”)¹ respectfully requests, pursuant to Sections 54.719 through 54.723 of the Commission’s rules,² that the Commission review the Universal Service Administrative Company (“USAC”) Funding Commitment Decisions issued on August 7, 2013 for the above-referenced Funding Year 2012 471 Applications.³ For the reasons set forth herein, the Commission should grant any waivers that may be necessary or warranted and remand the District’s 2012 Funding Requests to USAC for immediate approval.⁴

I. The District’s Shared Discount Percentage

USAC reduced the District’s shared discount from 69% to 64% because it reclassified the District’s Early Childhood School (Hawthorne) as having zero students eligible for the National

¹ Wheeling School District 21 is assigned Billed Entity Number (BEN) 135338.

² 47 C.F.R. §§ 54.719-54.723.

³ The following FRNs are covered under the applications: 2320185, 2320206, 2320214, 2320219, 2325672, 2325678, 2325737, 2325726, and 2319939.

⁴ In addition to the waiver requests set forth below, the District requests that to the extent necessary, the Commission waive section 54.507(d) of its rules and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate the Commission’s order in this proceeding.

School Lunch Program.⁵ The District's method of documenting eligibility for this school for e-rate purposes apparently did not meet to USAC's satisfaction. While the District believes that its records should have been sufficient, for purposes of this appeal, the District instead asks the Commission to approve funding based upon an alternative method that USAC has endorsed, which is to count as eligible students who have a sibling residing in the same household who have been properly documented as eligible.⁶ Using this method, the District has reviewed its records and confirms that there were at least 76 students enrolled at Hawthorne during the 2011-2012 who had siblings in attendance at other District schools who were eligible for the National School Lunch Program.⁷ As shown in the attached Exhibit 2, using this number in the Form 471 Block 4 Discount Calculation Worksheet yields a shared discount of 66%.

A much higher percentage of Hawthorne students would actually qualify for the National School Lunch Program, but the District is limited in its ability to retroactively produce accurate records that would satisfy USAC's requirements. While the District is confident that 76 Hawthorne children are listed at the same address as an older qualified sibling, it should be noted that even if the District could document only six such siblings, instead of 76, its overall discount rate would still climb to the same 66%. There is no reasonable basis on which the Commission could conclude, given the District's attached documentation, that there were not at least 6 Hawthorne students with properly documented siblings. The District therefore requests that the Commission direct USAC to provide funding based upon a 66% discount rather than 64% as approved by USAC.

⁵ The Hawthorne Early Childhood Center is one of the District's eligible schools and is assigned Entity Number 230227.

⁶ See <http://www.universalservice.org/sl/applicants/step04/alternative-discounts.aspx>

⁷ See attached letter, dated September 27, 2013, from Andrew Kruzich, Director of Business Services for Community Consolidated School District 21 ("Exhibit 1").

II. Price as Primary Factor in Selection

As it did for the 2011 funding year, USAC denied funding on the grounds that the District did not make price the most important factor in its selection process.⁸ The District appreciates that the Commission recently granted it a waiver from the competitive bidding requirements that will permit USAC to fund most of its services for 2011. But the District wishes to re-emphasize that no waiver should be needed because there is no compelling evidence that it actually violated the rule that it make price the most important factor in its selection process. On the contrary, the District has represented that price was its primary factor in its ultimate decisions. The District's position is corroborated by the fact that it actually chose the lowest-cost bid in almost every instance, the only exception being where the District lacked confidence that the lowest bidder could actually deliver the service that would meet the District's requirements. The Commission should therefore make a finding that the District did not violate the competitive bidding requirements and restore funding. Nonetheless, if the Commission believes a waiver is again necessary, the District provides additional information for each FRN below.

Internet Access (FRN 2320185), WAN (FRN 2320206), and Web Hosting (FRN 2320214)

A waiver can and (if necessary) should be granted for these FRNs because the underlying operative facts are the same as those upon which the Commission granted a waiver to the District for 2011.

⁸ USAC appears to have reached this conclusion based solely upon a document the District provided to USAC that lists categories for the District's initial evaluation of applications. On the document multiple categories including price were characterized as each comprising 20% of the initial weighting. Because of this single document, USAC apparently surmised that the District weighted other criteria equally to price for all FRNs and that price therefore was not the primary factor in the District's selections. However, as the District explained in its appeal for the 2011 funding year, price was the most important factor in the final selection process.

The District's 2012 requests for Internet Access, WAN service, and web hosting services are for continued funding of FRNs that were competitively bid in 2011.⁹ The services are covered under a multi-year contract with Net56, Inc. which extends through funding year 2015 (hereinafter, the "March 4, 2011 Net56 Contract"). Although USAC denied the underlying 2011 funding requests in November 2012, the Commission recently reviewed that decision and remanded the District's application to USAC with instruction to process the requests using the pricing found in the March 4, 2011 Net56 Contract.¹⁰ The Commission concluded that the District selected the lowest price vendor in choosing Net56 to provide Internet Access, WAN, and web hosting services and waived its competitive bidding rules with respect to the 2011 funding requests for those services.

USAC issued the funding decision for the District's 2012 requests for Internet Access, WAN service, and web hosting services prior to release of the September 12, 2013 Order and denied funding for each of the FRNs, as it did for 2011, on the basis that price was not the primary factor in selecting Net56 as the winning bidder. In light of the Commission's September 12, 2013 Order, the District requests that the Commission apply the findings and waiver set forth in that decision to the 2012 FRNs for these services, which are a continuation of the 2011 FRNs, and remand 471 Application No. 853298 to USAC to process using the pricing found in the March 4, 2011 Net56 Contract.

In addition, to eliminate the necessity of a repeat appeal for every funding year covered under the March 4, 2011 Net56 Contract, the Commission should extend the waiver set forth in the

⁹ See 2012 Form 471 No. 853298, Block 15. For each FRN, the District indicates the request is a continuation of an FRN from a previous funding year based on a multi-year contract and provides the corresponding 2011 FRN.

¹⁰ See *Request for Review of Decisions of the Universal Service Administrator by Net56, Inc. and Wheeling School District 21*, CC Docket 02-6, Order, DA 13-1891 (2013)("September 12, 2013 Order").

because it was less expensive than [[[BEGIN CONFIDENTIAL ██████████
██████████ END CONFIDENTIAL]]]. The District chose Sprint Nextel's bid because of its low price.

Because the District chose the lowest-priced bid for each of these services, any necessary waiver of the competitive bidding requirements should be granted, and the Commission should grant this appeal to direct USAC to fund these services.

Email Hosting (FRN 2320219)

As is the first set of services described above, the District's 2012 funding application for email hosting service is also a request for continued funding of a service that was competitively bid in 2011 and covered under the multi-year March 4, 2011 Net56 Contract.¹⁵ Unlike those other services, in the appeal for the 2011 funding year, the Commission declined to grant a waiver to the District because it did not select the lowest-priced bid.

While it is true that the District did not choose the nominally-lowest bids for email hosting, it did weigh price most heavily and found that Net56's bid was the most cost-effective. The lowest bid, [[[BEGIN CONFIDENTIAL ██████████ END CONFIDENTIAL]]], was, upon review, not considered by the District to be a bona fide, reliable quality service offering responsive to the District's Form 470. Entirely consistent with Commission precedent, the District concluded it was not obligated to consider the bid further. The Commission has held that a district is not obligated to consider further a bid that fails to satisfy minimum technical capabilities, such as the quality of service.¹⁶

¹⁵ See 2012 Form 471 No. 853298, Block 15 for FRN 2320219. The District indicates in Block 15 the request is a continuation of an FRN from a previous funding year based on a multi-year contract and provides the corresponding 2011 FRN.

¹⁶ The Commission has previously held that a district is not obligated to consider further a bid that fails to satisfy minimum technical capabilities, such as quality of service. See *Requests for Review of Decisions of the Universal*

Net56's price was nominally \$89 higher than the second lowest bid [[[BEGIN CONFIDENTIAL ██████████ END CONFIDENTIAL]]. However, after reviewing the proposal the District concluded that the bid was less cost-effective than the Net56 bid because it would require substantial implementation work, service interruption, reduced functionality and significant re-training for all staff. These additional costs were easily expected to exceed \$89/month, so the District reasonably concluded that Net56 did in fact offer the lowest net price. This, Net56's bid offered the most cost-effective, viable email hosting service.

The fact that the District otherwise chose the lowest bid for nearly all of its services in both 2011 and 2012 demonstrates the primary importance of price in its selection process. The Commission should therefore find that the District complied with the competitive bidding requirements and direct USAC to fund this FRN.

III. Conclusion

For the foregoing reasons, the Commission should grant this appeal and direct USAC to fund the above-referenced FRNs as described above.

Respectfully submitted,



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Counsel for Wheeling School District 21

October 17, 2013

Service Administrator by Allendale County School District Cedar Mountain, North Carolina, et. al. Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, DA 11-723, ¶ 50 and n.9 (2011).

CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that a true and correct copy of the foregoing *Request for Review by Wheeling School District 21 of Funding Decision of The Universal Service Administrator* was mailed postage prepaid this 17th day of October, 2013 to the following:

Universal Service Administrative Company
Schools and Libraries Division
100 South Jefferson Road
P.O. Box 902
Whippany, New Jersey 07981

/s/

Debra Sloan

EXHIBIT 1



Community Consolidated School District 21

999 West Dundee Road • Wheeling, Illinois 60090
847.537.8270
www.ccsd21.org

Dr. Kate Hyland, Superintendent

Board of Education

Bill Harrison, *President* • Arlen S. Gould, *Vice President* • Staci Allan, *Secretary*
Pamela Becker Dean • Kathy Edmonds • Debbi McAtee • Phil Pritzker

September 27, 2013

To Whom It May Concern:

The purpose of this letter is to confirm that there were at least 76 (seventy six) students enrolled at CCSD 21's Hawthorne Early Childhood Center during school year 2011-2012 who had siblings in attendance during the same school year at other CCSD 21 schools and who were categorized as Free or Reduced under USDA guidelines.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Andrew Kruzich', written over a large, light-colored oval shape.

Andrew Kruzich
Director of Business Services
847-520-2773

EXHIBIT 2

Eligible Entity	Urban or	Total Students	Total NSLP	% Students Elig for	Discount from	Weighted Product for Calc.
	Rural		Students	NSLP	Disc. Matrix	Shared Disc.
Riley Elementary	U	303	34	11.221%	40	12120
Edgar A. Poe Elementary	U	410	89	21.707%	50	20500
Frost Elementary	U	595	336	56.471%	80	47600
Longfellow Elementary	U	431	38	8.817%	40	17240
Cooper Middle	U	675	213	31.556%	50	33750
Kilmer Elementary	U	492	255	51.829%	80	39360
District 21 Admin Center	U	0	0	0.000%	0	0
London Middle	U	682	272	39.883%	60	40920
Eugene Field Elementary	U	588	406	69.048%	80	47040
Tarkington Elementary	U	439	174	39.636%	60	26340
Mark Twain Elementary	U	492	383	77.846%	90	44280
Holmes Middle	U	743	546	73.486%	80	59440
Hawthorne Early Childhood	U	590	76	12.881%	40	23600
Whitman Elementary	U	553	441	79.747%	90	49770
Total		6993				461960

**Shared Discount % = Total of Weighted
Product/Total of Students**

66.0603