

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

In the Matter of	)	
	)	
Requests for Review of	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Conestoga Valley School District	)	File Nos. SLD-741725, 741394,
Lancaster, PA	)	741666, 741572
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: October 23, 2012**

**Released: October 23, 2012**

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent,<sup>1</sup> we deny four appeals from Conestoga Valley School District (Conestoga)<sup>2</sup> seeking review of decisions made by the Universal Service Administrative Company (USAC) to rescind funding committed under the E-rate program (more formally known as the schools and

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<sup>1</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (1997) (*Universal Service Order*) (subsequent history omitted) (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates); *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26419, para. 26 (2003) (stating that the FCC Form 470 puts potential bidders on notice of the applicant's specific needs to encourage competitive bids, and that the Commission's rules contemplate that providers will bid on the cost of the desired products and services eligible for discounts).

<sup>2</sup> See Letter from Adele Huntzinger, Assistant Director of Business Services, Conestoga Valley School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 30, 2011) (regarding FCC Form 471 application number 741725, funding request number (FRN) 2002547); Letter from Adele Huntzinger, Assistant Director of Business Services, Conestoga Valley School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 30, 2011) (regarding FCC Form 471 application number 741394, FRN 2002104); Letter from Adele Huntzinger, Assistant Director of Business Services, Conestoga Valley School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 30, 2011) (regarding FCC Form 471 application number 741666, FRN 2002404); Letter from Adele Huntzinger, Assistant Director of Business Services, Conestoga Valley School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 30, 2011) (regarding FCC Form 471 application number 741572, FRN 2002357) (collectively, Requests for Review).

libraries universal service support program) for funding year 2010.<sup>3</sup> In each decision, USAC determined that Conestoga failed to comply with the Commission's competitive bidding requirements because it discouraged potential bidders from submitting proposals in response to its FCC Form 470 posting.<sup>4</sup> Based on our review of the record,<sup>5</sup> we agree with USAC's determinations and find that Conestoga violated sections 54.504 and 54.511 of the Commission's competitive bidding rules.<sup>6</sup>

2. Under the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.<sup>7</sup> The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.<sup>8</sup> The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services.<sup>9</sup> The RFP must be available to all potential bidders for the duration of the bidding process.<sup>10</sup> After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.<sup>11</sup> The applicant must consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.<sup>12</sup>

3. The record shows that Conestoga received five inquiries from representatives of service providers interested in submitting bids in response to Conestoga's FCC Form 470 posting.<sup>13</sup> Rather than addressing the representatives' inquiries, Conestoga discouraged them from submitting bids for the funding requests at issue.<sup>14</sup> Specifically, Conestoga informed the representatives that it was not planning

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<sup>3</sup> Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>4</sup> See 47 C.F.R. §§ 54.503, 54.511 (2012). See also 47 C.F.R. §§ 54.504, 54.511 (2009); Letter from Universal Service Administrative Company (USAC), Schools and Libraries Division, to Adele Huntzinger, Conestoga Valley School District (dated July 12, 2011) (regarding FCC Form 471 application number 741725); Letter from USAC, Schools and Libraries Division, to Adele Huntzinger, Conestoga Valley School District (dated July 12, 2011) (regarding FCC Form 471 application number 741394); Letter from USAC, Schools and Libraries Division, to Adele Huntzinger, Conestoga Valley School District (dated July 12, 2011) (regarding FCC Form 471 application number 741666); Letter from USAC, Schools and Libraries Division, to Adele Huntzinger, Conestoga Valley School District (dated July 12, 2011) (regarding FCC Form 471 application number 741572).

<sup>5</sup> See 47 C.F.R. § 54.723.

<sup>6</sup> See 47 C.F.R. §§ 54.503, 54.511 (2012). See also 47 C.F.R. §§ 54.504, 54.511 (2009).

<sup>7</sup> 47 C.F.R. § 54.503 (2012). See also 47 C.F.R. § 54.504 (2009).

<sup>8</sup> *Id.*

<sup>9</sup> See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

<sup>10</sup> See FCC Form 470.

<sup>11</sup> 47 C.F.R. § 54.503 (2012). See also 47 C.F.R. § 54.504 (2009).

<sup>12</sup> 47 C.F.R. §§ 54.503, 54.511 (2012). See also 47 C.F.R. §§ 54.504, 54.511 (2009).

<sup>13</sup> See Requests for Review.

<sup>14</sup> *Id.*

to change service providers for funding year 2010 or that it preferred to meet with them over the summer in 2010, before the beginning of the next funding year, to discuss new service offerings.<sup>15</sup> Thus, by Conestoga's own admission, it did not intend to evaluate any proposals for its underlying funding year 2010 funding requests and, instead, continued with its current service provider, despite having initiated a competitive bidding process by posting its FCC Form 470.<sup>16</sup> We are deeply concerned about practices such as these that undermine the framework of the competitive bidding process. When an applicant discourages prospective service providers from participating in a competitive bidding process, the applicant suppresses fair and open competitive bidding and ultimately damages the integrity of the program.<sup>17</sup> Conestoga has not provided sufficient evidence demonstrating that USAC erred in its decision and has not demonstrated compliance with the Commission's competitive bidding requirements.<sup>18</sup> We therefore affirm USAC's decisions to rescind funding committed to Conestoga for the funding requests at issue.<sup>19</sup>

4. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Requests for Review filed by Conestoga Valley School District ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>15</sup> See, e.g., E-mail from Adele Huntzinger, Conestoga Valley School District, to Kapil Bhalia, Broadview Networks (dated Nov. 24, 2009) (stating "I reviewed the information sent by you and the other telecommunications companies. Although it is a project that I plan to review at some point in the near future, we are not planning on changing our local and long distance phone service providers."); E-mail from Adele Huntzinger, Conestoga Valley School District, to Donald Longenecker, One Communications (dated Dec. 9, 2009) (stating "I would definitely like to look into your services but in discussion with our tech department, we would prefer to meet over the summer when we have the time to devote to a complete review of our telecommunications services.").

<sup>16</sup> FCC Form 470, Conestoga Valley School District (posted Nov. 10, 2009).

<sup>17</sup> See, e.g., *Universal Service Order*, 12 FCC Rcd at 9029, para. 480 (observing that competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about all of the choices available to them).

<sup>18</sup> See 47 C.F.R. §§ 54.503, 54.511 (2012). See also 47 C.F.R. §§ 54.504, 54.511 (2009).

<sup>19</sup> See *supra* n.4.