

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Petitions for Reconsideration by
Mansfield Independent School District
Mansfield, TX
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-788976, 794118 et al.
CC Docket No. 02-6

ORDER ON RECONSIDERATION

Adopted: December 20, 2018

Released: December 20, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The Commission's E-Rate program relies on competitive bidding to ensure that schools and libraries supported by federal universal service funds get the best quality services at the lowest available rates. To enable bidders to reasonably determine the needs of participating schools and libraries, applicants must list the services requested with sufficient specificity for a bidder to compete. In funding years 2011, 2012, and 2013, Mansfield Independent School District (Mansfield) sought to participate in the E-Rate program but declined to provide detail about the dozens of disparate services for which it was seeking bids and no information regarding the quantity or capacity of such services. As a result, no bidders responded to Mansfield's request, and Mansfield instead chose its apparently preferred vendor through a state master contract.

2. The Universal Service Administrative Company (USAC) found that Mansfield had violated the Commission's competitive bidding rules by failing to specify the services it requested with sufficient specificity, which Mansfield later appealed. The Bureau rejected Mansfield's appeals in the June 2015 and July 2016 Streamlined Request Resolution Public Notices.1 Mansfield thereafter filed the instant petitions for reconsideration.2

1 Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket No. 02-6, Public Notice, 30 FCC Rcd 7056, 7060, n.11 (WCB 2015) (June 2015 Streamlined Request Resolution Public Notice) (finding that Mansfield violated the Commission's competitive bidding requirements by posting an FCC Form 470 with inadequate specificity and no indication of posting a request for proposal (RFP) on services being sought); see also Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 8603, 8609, n.19 (WCB 2016) (July 2016 Streamlined Request Resolution Public Notice, or collectively, June 2015 and July 2016 Streamlined Request Resolution Public Notices) (finding the same violation for FCC Form 471 application number 904090, which had not been included in the public notice in June 2015). The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 CFR § 1.106(a)(1).

2 Petition for Reconsideration by Mansfield Independent School District, CC Docket No. 02-6 (filed July 30, 2015) (Petition for Reconsideration); Supplemental Brief filed in support of Petition for Reconsideration by Mansfield Independent School District, CC Docket No. 02-6 (filed Mar. 11, 2016) (Supplemental Brief); Petition for Reconsideration by Mansfield Independent School District, CC Docket No. 02-6 (filed Aug. 25, 2016) (2016

(continued....)

3. By this Order, we reaffirm our findings that USAC properly denied and rescinded Mansfield's E-Rate funding on the basis that Mansfield violated the Commission's competitive bidding rules by failing to post FCC Forms 470 with sufficient information to enable prospective service providers to reasonably determine the school district's needs and formulate responsive bids.<sup>3</sup> We find Mansfield's arguments unavailing and dismiss the Petitions for Reconsideration as procedurally defective to the extent Mansfield raises the same substantive arguments asserted in its previously filed appeal. We also deny the petitions for reconsideration on the merits.<sup>4</sup>

## II. BACKGROUND

### A. E-Rate Program Rules and Requirements

4. The E-Rate program allows eligible schools, libraries, and consortia that include eligible schools and libraries to apply for universal service support for eligible services.<sup>5</sup> E-Rate program rules generally require that eligible entities seek competitive bids for services eligible for support.<sup>6</sup> In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 to initiate the competitive bidding process.<sup>7</sup> The FCC Form 470, or any publicly available RFPs cited in the FCC Form 470, must include a list of specified eligible services for which the applicant requests bids, and sufficient information describing those services to enable bidders to reasonably determine the needs of the applicant and submit bids.<sup>8</sup> After submitting an FCC Form 470, the applicant must wait at least 28 days before making commitments with its selected service providers.<sup>9</sup>

5. Under program rules, applicants may purchase eligible services from "master contracts" negotiated by an appropriate third party such as a governmental entity.<sup>10</sup> If the third party issues an FCC Form 470 and complies with the Commission's competitive bidding requirements and state procurement laws, the applicant is not required to conduct a separate competitive bidding evaluation.<sup>11</sup> If, however, the

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Petition for Reconsideration ) (requesting that the Bureau incorporate by reference the arguments and pleadings from the Petition for Reconsideration filed in July 2015) (jointly, "Petitions for Reconsideration"). For the purposes of this Order, we will cite to the arguments in the July 2015 Petition for Reconsideration unless otherwise noted.

<sup>3</sup> *June 2015 Streamlined Request Resolution Public Notice*, 30 FCC Rcd at 7060, n.11; *July 2016 Streamlined Request Resolution Public Notice*, 31 FCC Rcd at 8609 n.19.

<sup>4</sup> Mansfield also requests a hearing in connection with its Petition for Reconsideration, pursuant to 47 CFR § 1.106. Petition for Reconsideration at 4. We reject this request because that rule only applies to cases that have been designated for hearing, *see, e.g., Summary Decisions*, Report and Order, 34 FCC 2d 485, 490, para. 13 (1972); *Petition for Reconsideration of Responses to Requests for Declaratory Ruling*, Memorandum Opinion and Order, 8 FCC Rcd 8398, 8398, para. 3 (PRB 1993), and because we find no "substantial doubt on established policy and undisputed facts" on which a hearing should be held. 47 CFR § 1.106(a)(2).

<sup>5</sup> *See* 47 CFR §§ 54.501-54.502 (2011).

<sup>6</sup> *See* 47 CFR § 54.503 (2011).

<sup>7</sup> *See* 47 CFR § 54.503(c) (2011).

<sup>8</sup> *See id.*

<sup>9</sup> *See* 47 CFR § 54.503(c)(4) (2011).

<sup>10</sup> *See* 47 CFR § 54.500 (2011) (defining "master contract" as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchase directly from the service provider).

<sup>11</sup> *See 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, 5452-53, para. 233 (1997) (*Fourth Order on Reconsideration*).

applicant files an FCC Form 470 and considers a state master contract as one of the bids submitted, then the applicant must follow a competitive bidding process pursuant to FCC requirements and state and local procurement law.<sup>12</sup>

### **B. Mansfield's Competitive Bidding Process**

6. Mansfield is a public school district in Mansfield, Texas, consisting of five high schools, a Career Tech Academy, six middle schools, six intermediate schools, and 22 elementary campuses.<sup>13</sup> In December 2010, Mansfield posted an FCC Form 470 on behalf of its entire school district seeking bids for telecommunications services, Internet access, internal connections, and basic maintenance of internal connections (BMIC) services for funding year 2011.<sup>14</sup> In that FCC Form 470, Mansfield used the term “District Wide” to describe the “Quantity and/or Capacity” of 62 types of services and “5 schools” to describe the “Quantity and/or Capacity” of three types of internal connections services.<sup>15</sup> It did not identify how many phone lines it would need for local or long distance voice services, how many point-to-point T-1 lines or other circuits it would need, nor the bandwidth capacity it would need per entity.<sup>16</sup> Mansfield also indicated that it did not intend to release an RFP for any of the requested services.<sup>17</sup> Following the close of the 28-day bidding period for funding year 2011, Mansfield received zero bids.<sup>18</sup> It then selected its service providers from a master contract negotiated by the State of Texas Department of Information Resources, providing these service providers with the needed quantities and capacities to determine pricing for the requested services, and filed its FCC Form 471 applications.<sup>19</sup>

7. Mansfield followed the same process in funding years 2012 and 2013, posting FCC Forms 470 on behalf of the school district using the term “District Wide” to describe 64 and 59 services, respectively.<sup>20</sup> In both of those funding years, Mansfield again received no bids. It instead selected service providers from the state master contract, provided sufficient information to those service providers to receive pricing information, and filed its FCC Form 471 applications requesting E-Rate support.<sup>21</sup> USAC approved and disbursed funding to Mansfield for its applications for funding years 2011 and

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<sup>12</sup> *Id.* at 5453, paras. 233-34 (“[A] master contract that was put out for bid several years ago but has not yet expired might not reflect the cost reductions resulting from recent entry into the local exchange market . . . .”); *Request for Review of a Decision of the Universal Service Administrator by Paterson School Dist.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order 21 FCC Rcd 13101, 13102-03, para. 3 (WCB 2006) (“If the applicant files an FCC Form 470 and considers a state master contract as one of the bids, then the applicant must follow a competitive bidding process pursuant to FCC requirements and state and local procurement law.”). *See also Request for Review of Decisions of the Universal Service Administrator by Gila Bend Unified School District 24; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6870, 6873-74, para. 8 (WCB 2011) (*Gila Bend Order*); *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Free Union School District, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 8630, 8640, para. 22 (WCB 2011) (*Central Islip Order*).

<sup>13</sup> Petition for Reconsideration at 4.

<sup>14</sup> FCC Form 470 No. 970210000876801, Mansfield Independent School District (posted Dec. 17, 2010) (Mansfield FY2011 FCC Form 470).

<sup>15</sup> In Mansfield’s FCC Form 470 for funding year 2011, it described the “Quantity and/or Capacity” for just three Internal Connections services (network routers/upgrades, network switches/upgrades, and network catalyst/upgrades) as “5 schools.” For others, such as “High Speed End-End Transport and High Speed Internet Access,” it described the “Quantity and/or Capacity” as “District Wide.”

<sup>16</sup> Mansfield FY2011 FCC Form 470.

<sup>17</sup> *Id.*

<sup>18</sup> Supplemental Brief at 4.

2012.<sup>22</sup>

### C. USAC's Funding Denial and Rescission Decisions

8. In May 2014, following a special compliance investigative review conducted by USAC to investigate potential competitive bidding violations in funding year 2013 by Mansfield, USAC issued Funding Commitment Decision Letters denying Mansfield's E-Rate applications for that funding year.<sup>23</sup> USAC also issued Commitment Adjustment Letters rescinding Mansfield's funding commitments for funding years 2011 and 2012 and seeking to recover erroneously disbursed funds.<sup>24</sup> In both sets of letters, USAC explained that it was denying the funding requests "because the FCC Form[s] 470 [did] not comply with the statutory mandate that applicants submit 'bona fide requests for services,'" in that they were "encyclopedic and [did] not list only those services for which funding was actually sought."<sup>25</sup> Furthermore, USAC noted that "a Request for Proposal was not issued to narrow the scope of the desired services to only those that [Mansfield] actually applied for."<sup>26</sup>

9. In July 2014, Mansfield submitted an appeal to USAC concerning USAC's denial and rescission of funding.<sup>27</sup> In its appeal, Mansfield argued that the services requested in its establishing FCC Forms 470 were not an encyclopedic list of eligible services because they were based on the school district's technology plans.<sup>28</sup>

10. In September 2014, USAC denied Mansfield's appeal, explaining that Mansfield's establishing FCC Forms 470 for funding years 2011, 2012, and 2013 "did not define the specific services or functions, including quantity and/or capacity, for which funding would be sought when the FCC Form[s] 471 [were] filed."<sup>29</sup> Thus, USAC concluded that "the potential bidders were unable to determine [Mansfield's] specific needs based on technology plan goals and formulate their bids accordingly."<sup>30</sup>

### D. Proceedings on Appeal

11. In October 2014, Mansfield sought review and/or waiver of USAC's decision from the

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<sup>19</sup> FCC Form 471 No. 788976, Mansfield Independent School District (filed Mar. 10, 2011); FCC Form 471 No. 794118, Mansfield Independent School District (filed Mar. 10, 2011).

<sup>20</sup> FCC Form 470 No. 595840000980192, Mansfield Independent School District (posted Dec. 16, 2011) (Mansfield FY2012 FCC Form 470); FCC Form 470 No. 764940001074497, Mansfield Independent School District (posted Dec. 17, 2012) (Mansfield FY2013 FCC Form 470). As it did in funding year 2011, the district described all of its requested services, including those like "High Speed Internet Access" and "High Speed End-End Transport," as "District Wide."

<sup>21</sup> FCC Form 471 No. 815691, Mansfield Independent School District (filed Mar. 23, 2011); FCC Form 471 No. 845493, Mansfield Independent School District (filed Mar. 8, 2012); FCC Form 471 No. 871961, Mansfield Independent School District (filed Mar. 20, 2012); FCC Form 471 No. 902395, Mansfield Independent School District (filed Mar. 7, 2013); FCC Form 471 No. 906722, Mansfield Independent School District (filed Mar. 7, 2013).

<sup>22</sup> Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 815691 (June 23, 2011); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 794118 (July 6, 2011); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 788976 (Sept. 13, 2011); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 845493 (July 31, 2012); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 871961 (July 31, 2012) (FYs 2011 and 2012 Funding Commitment Decision Letters).

<sup>23</sup> Letter from USAC, Schools and Libraries Division, to Debi Sovereign or Jane Kellogg, Mansfield Independent School District, concerning Application No. 902395 (May 22, 2014); Letter from USAC, Schools and Libraries Division, to Jane Kellogg, Mansfield Independent School District, concerning Application No. 906722 (May 22, 2014) (FY2013 Funding Commitment Decision Letters).

Commission.<sup>31</sup> Mansfield argued that its use of the term “District Wide” represented a good faith effort to define the quantity and capacity of the specific services and functions listed in its FCC Forms 470, as Mansfield was indeed requesting services for all sites in the district.<sup>32</sup> Mansfield also argued it was entitled to a waiver because there was no evidence of waste, fraud, or abuse, there was no damage to the competitive bidding process, it could demonstrate that the Priority One services it received satisfied the school district’s precise needs and were provided at the lowest cost, and upholding USAC’s decision would cause the school district to suffer undue financial hardship.<sup>33</sup>

12. Based upon our review of the record, on appeal, we upheld USAC’s determination that the service descriptions in Mansfield’s FCC Forms 470 did not provide adequate specificity.<sup>34</sup> We also determined that no special circumstances existed to justify a waiver of the Commission’s competitive bidding rules and denied the appeal in its entirety.<sup>35</sup>

13. In its Petition for Reconsideration filed in July 2015, Mansfield seeks reconsideration of its request for a review and/or waiver and restates facts and arguments it previously asserted in its appeal.<sup>36</sup> Mansfield also argues that its use of the term “District Wide” for describing the quantity and/or capacity of requested E-Rate services was justified because, according to Mansfield, this term is commonly used by E-Rate applicants, has been approved by USAC on previous occasions, and is supported by a Bureau Order.<sup>37</sup>

14. In August 2016, Mansfield filed an additional Petition for Reconsideration in response to the denial in the *July 2016 Streamlined Request Resolution Public Notice* requesting that the Bureau incorporate by reference the Petition for Reconsideration filed in 2015 along with its Supplemental Brief as the same facts and arguments apply.<sup>38</sup>

### III. DISCUSSION

15. We have previously fully considered and rejected most of the facts and arguments offered

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<sup>24</sup> Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 788976 (May 29, 2014); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 794118 (May 29, 2014); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 815691 (May 29, 2014); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 845493 (May 29, 2014); Letter from USAC, Schools and Libraries Division, to Doug Brubaker, Mansfield Independent School District, concerning Application No. 871961 (May 29, 2014) (FYs 2011 and 2012 Commitment Adjustment Letters).

<sup>25</sup> FY2013 Funding Commitment Decision Letters; FYs 2011 and 2012 Commitment Adjustment Letters.

<sup>26</sup> *Id.*

<sup>27</sup> Letter of Appeal from Jane Kellogg, on behalf of Mansfield Independent School District, to USAC, Schools and Libraries Division (July 17, 2014).

<sup>28</sup> *Id.*

<sup>29</sup> USAC’s Decision on Appeal, to Jane Kellogg, on behalf of Mansfield Independent School District (Sept. 5, 2014).

<sup>30</sup> *Id.*

<sup>31</sup> Letter from Jane Kellogg, on behalf of Mansfield Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (Oct. 29, 2014) (Request for Review).

<sup>32</sup> Request for Review at 4-5, 8-10, 16.

<sup>33</sup> *Id.* at 5-8.

<sup>34</sup> *June 2015 Streamlined Request Resolution Public Notice*, 30 FCC Rcd at 7060, n.11; *July 2016 Streamlined Request Resolution Public Notice*, 31 FCC Rcd at 8609 n.19.

by Mansfield in support of its Petitions for Reconsideration. Therefore, to the extent Mansfield reiterates these previously asserted facts and arguments, we dismiss the Petitions for Reconsideration pursuant to section 1.106(p)(3) of the Commission's rules.<sup>39</sup> We also reject the previously-raised arguments independently and in the alternative, and we deny the Petitions for Reconsideration on the merits with respect to the newly-raised argument.

16. A bona fide request for E-Rate services means that “applicants must submit a list of specified services for which they anticipate they are likely to seek discounts consistent with their technology plans, in order to provide potential bidders with sufficient information on the FCC Form 470, or on an RFP cited in the FCC Form 470, to enable bidders to reasonably determine the needs of the applicant.”<sup>40</sup> When an applicant fails to include sufficient information on its FCC Form 470 to enable prospective service providers to identify and formulate bids, that applicant has violated the competitive bidding process.<sup>41</sup>

17. In denying Mansfield's appeal in the *June 2015 and July 2016 Streamlined Request Resolution Public Notices*, we determined that Mansfield did not meet the standard in section 54.503 of our rules for including sufficient information on its FCC Form 470 to enable prospective service providers to identify and formulate bids.<sup>42</sup> The record shows that in each of Mansfield's FCC Forms 470 for funding years 2011, 2012, and 2013, Mansfield sought services under all four categories (telecommunications services, Internet access, internal connections, and BMIC services) for approximately 60 types of services in each year on behalf of its entire school district, and described the “Quantity and/or Capacity” of these services as “District Wide,” or in three instances, as “5 schools.”<sup>43</sup>

18. The issue is that Mansfield did not provide enough detail about the dozens of disparate E-Rate supported services for which it was seeking bids to allow potential bidders to formulate meaningful and responsive bids.<sup>44</sup> Indeed, at the most fundamental level, Mansfield provided no information regarding the quantity or capacity of the services for which it was seeking bids.<sup>45</sup> For instance, a mere

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<sup>35</sup> *Id.*

<sup>36</sup> See, e.g., Request for Review at 8 (“[I]n designating that the services were for “district wide services,” they meant all sites in the district.”) and Petition for Reconsideration at 5 (“District wide” was an accurate and appropriate term, as the services and improvements were sought for all campuses in the District[.]”); Request for Review at 14 (including a table of the services requested and the correlation to Mansfield's technology plan) and Petition for Reconsideration at 7 (same); Request for Review at 5 (“Mansfield ISD has demonstrated that the record includes no evidence of waste, fraud or abuse”) and Petition for Reconsideration at 22-23 (“Here, there is no fraud, waste, abuse, misuse of funds, or material failure to comply with program requirements.”); Request for Review at 5 (“There was no damage to the competitive bidding process.”) and Petition for Reconsideration at 22 (“[T]he District's actions in this case did not undermine or compromise the competitive bidding process.”); Request for Review at 7 (“The District will suffer undue financial hardship.”) and Petition for Reconsideration at 23 (“Denial of E-rate funds will cause undue financial hardship to the District.”); Request for Review at 6 (“The district can demonstrate that the Priority 1 services that it has received satisfied its precise needs and were provided at the lowest cost.”) and Petition for Reconsideration at 12-13 (“[T]he District's procurement method [for Priority 1 funds] was the result of competitive bidding, which was done on a statewide level and, as a result, was even more competitive than the District could have achieved on its own . . . As a result, the District received the best value for the District and ensured prudent use of E-rate resources.”); Request for Review at 6 (“The district opted not to make selections for Priority 2 services because of financial shortfalls,” and is completing its Priority 2 requests “without the support of Universal Services funds.”) and Petition for Reconsideration at 9 (“The District did not err by failing to issue an RFP for Priority Two funds because, ultimately, it did not purchase the requested improvements or accept any funds for Priority Two items.”).

<sup>37</sup> Petition for Reconsideration at 13-23; Supplemental Brief at 3-4.

<sup>38</sup> 2016 Petition for Reconsideration at 4.

notation that services would be used “District Wide” or at “5 schools” did not provide potential bidders with sufficient detail to identify and formulate responsive bids, as these descriptions made it impossible for service providers to estimate the level of effort, amount of equipment, or subsequent prices necessary to provide these services.<sup>46</sup> Or when requesting “Local Voice Services” and “Long Distance Phone Service,” Mansfield did not quantify the number of phone lines it was seeking at any of the schools in the district. Indeed, Mansfield offers no evidence that any provider, other than an incumbent service provider, seeking to respond to these requests would have known what the district would ultimately seek, which in that case was E-Rate support for close to six hundred local lines.

19. As another example, when requesting “Internet Access Services,” Mansfield did not specify the amount of bandwidth it was seeking for any of its entities. In funding year 2012, when Mansfield ultimately ordered Internet access services, the Item 21 Attachment filed with its funding year 2012 FCC Form 471 indicates that Mansfield increased the port to the Internet from 450 Mbps to 1,000 Mbps.<sup>47</sup> Yet a potential service provider looking at the FCC Form 470 would not have known whether to offer bids for 10 Mbps service, 10 Gbps service, or anything in between for any of the three funding years in which Mansfield sought bids. Of course, Mansfield could have offered a more detailed RFP in conjunction with its FCC Form 470, but Mansfield indicated on its FCC Forms 470 that it did not intend to release an RFP,<sup>48</sup> thereby foreclosing the opportunity to provide additional detail about these services to potential bidders.

20. Moreover, the competitive bidding rules are essential to ensuring that applicants select the service offerings that will be the most cost-effective means of meeting their needs.<sup>49</sup> The lack of

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<sup>39</sup> 47 CFR § 1.106(p)(3) (allowing the Commission to dismiss petitions for reconsideration that rely on arguments that have been fully considered and rejected by the Commission within the same proceeding).

<sup>40</sup> See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26422, para. 36 (2003) (*Ysleta Order*); see also 47 CFR § 54.503(c) (applicants must submit an FCC Form 470 for posting that includes, at a minimum, a list of specified services for which the applicant requests bids, and sufficient information to enable bidders to reasonably determine the needs of the applicant).

<sup>41</sup> See *Request for Review of the Decision of the Universal Service Administrator by Washington Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13746, 13748, paras. 3-5 (WCB 2013) (*Washington Unified Order*).

<sup>42</sup> See 47 CFR § 54.503(c) (2011); *Ysleta Order*, 18 FCC Rcd 26407, 26410, para. 7; *Washington Unified Order*, 28 FCC Rcd 13746, 13748, paras. 3-5.

<sup>43</sup> See Mansfield FY2011 FCC Form 470; Mansfield FY2012 FCC Form 470; Mansfield FY2013 FCC Form 470.

<sup>44</sup> 47 CFR § 54.503(c) (2011).

<sup>45</sup> We note that Mansfield requested bids for “OptEMan” and “Gigaman” circuits in each of the FCC Forms 470. It is unclear whether these terms are associated with certain bandwidth capacities, but the fact that they are registered trademarks for AT&T Ethernet services raises additional concerns about potential competing service providers having sufficient information to provide responsive bids.

<sup>46</sup> Mansfield in its Petition filed in 2016 states the Bureau (as well as USAC) failed to explain in the earlier denials why its application violated the Commission’s rules. 2016 Petition for Reconsideration at 5. The further explanation provided in this Order addresses any alleged procedural defects with the earlier denial(s).

<sup>47</sup> See FY2012 FCC Form 471, Item 21 Attachment.

<sup>48</sup> See Mansfield FY2011 FCC Form 470; Mansfield FY2012 FCC Form 470; Mansfield FY2013 FCC Form 470.

<sup>49</sup> See *Ysleta Order*, 18 FCC Rcd at 26435, para. 65; 47 CFR §§ 54.503, 54.504, 54.511 (requiring applicants to carefully consider all bids submitted and select the most cost-effective service offering).

sufficient information in the FCC Forms 470 or an accompanying RFP prevented potential providers from knowing what Mansfield was seeking with respect to approximately 60 services in each funding year in order to estimate costs and subsequent pricing. As such, service providers could not reasonably determine Mansfield's needs and, Mansfield in fact, did not receive any bids. Neither Mansfield, USAC, nor the Commission can determine whether or not Mansfield selected the most cost-effective offerings for the services it purchased as required by the program rules. Accordingly, Mansfield's failure to post an FCC Form 470 with sufficient information violated the Commission's competitive bidding rules.

21. In its underlying appeal and Petitions for Reconsideration, Mansfield makes several arguments that it nonetheless complied with the Commission's competitive bidding rules. For example, Mansfield argues that "District Wide" was appropriate because the services Mansfield sought were for all campuses in the school district pursuant to its technology plan.<sup>50</sup> But such consistency is irrelevant. The question is whether Mansfield posted sufficient details of its requested services so that competitors to its incumbent provider could bid—and they could not. Similarly, we disagree with Mansfield's argument that all service providers had the same information.<sup>51</sup> That avails little when that information is insufficient to allow providers to formulate responsive bids—and untrue to the extent that the incumbent provider knew what services at what capacities and quantities Mansfield had deployed in the prior funding year.

22. Regarding its request for Priority One services,<sup>52</sup> Mansfield also argues in its underlying appeal and Petitions for Reconsideration that it did not violate the Commission's competitive bidding rules when it posted an FCC Form 470 for the dozens of services with the "District Wide" language or failed to issue an RFP, because it ultimately procured its Priority One services through an interlocal cooperative (the Texas Department of Information Resources).<sup>53</sup> Mansfield claims that this procurement method demonstrated the school district's compliance with competitive bidding rules because the cooperative agreement was itself the result of competitive bidding done on a statewide level and that it enabled Mansfield to secure services at the lowest cost.<sup>54</sup> However, the Bureau has explained that once an applicant releases an FCC Form 470 indicating that it is seeking bids, it must carefully consider the master contract against all other bids submitted and select the most cost-effective offering.<sup>55</sup> Consistent with the Commission's original decision to use competitive bidding to ensure schools and libraries are aware of cost-effective choices and universal service funds are used wisely and efficiently,<sup>56</sup> an applicant

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<sup>50</sup> Petition for Reconsideration at 5-9.

<sup>51</sup> Supplemental Brief at 4.

<sup>52</sup> Mansfield also raises arguments in its underlying appeal and Petition for Reconsideration regarding its request for Priority Two services. Request for Review at 6; Petition for Reconsideration at 9-11. It states that the decision to post an FCC Form 470 with the "District Wide" language and its failure to issue an RFP with additional detail did not damage the competitive bidding process because the school district subsequently determined that it could not afford its portion of the Priority Two improvements and it did not seek support for Priority Two services. While this does not alter the fact that Mansfield's FCC Form 470 service descriptions were insufficiently detailed to allow providers to make meaningful bids for services, we note that USAC is not attempting to reclaim any commitments for Priority Two services and this argument is irrelevant to the overall finding of competitive bidding violations.

<sup>53</sup> Request for Review at 6; Petition for Reconsideration at 11-13.

<sup>54</sup> *Id.*

<sup>55</sup> See *Gila Bend Order*, 26 FCC Rcd at 6873-74, para. 8; *Central Islip Order*, 26 FCC Rcd at 8640, para. 22; 47 CFR § 54.511; see also *Fourth Order on Reconsideration*, 13 FCC Rcd at 5452-53, para. 234 (encouraging schools and libraries to seek competitive bids even if a competitively-bid state master contract exists to obtain the benefits of competition and noting that they still "may ultimately obtain service pursuant to the master contract, *if they determine that the service provider under the master contract is the most cost effective provider,*" *emphasis added*).

<sup>56</sup> *Federal-State Joint Board on Universal Service*; CC Docket No. 96-45, Report and Order, 12 FCC Rcd at 8776, 8794, para. 30, 9133, para. 688 (1997) (*Universal Service First Report and Order*).



may not disregard other responsive bids simply because there is a competitively-bid state master contract available.<sup>57</sup> Here, Mansfield did not receive any bids.<sup>58</sup> Although the Commission's rules "do not require an applicant to have competing bidders where none appear," they do require applicants at least to seek competitive bids.<sup>59</sup>

23. Mansfield next argues that "it is likely that no bidders would have bid to provide the requested services."<sup>60</sup> We are not persuaded. It is just as likely, if not more so, that service providers confronted with an FCC Form 470 seeking bids on 60-plus services without providing any information as to quantity, capacity, location, among other relevant information, simply could not reasonably determine Mansfield's needs in order to craft responsive bids. That the district received zero bids suggests not that bidders were unlikely, but rather that the descriptions were too vague. By failing to provide sufficient detail on its FCC Form 470 to enable service providers to offer responsive bids, Mansfield violated our competitive bidding rules and potentially stifled competition from other service providers.<sup>61</sup> The use of the master contract does not, in any event, cure this competitive bidding violation even if they received zero bids, nor does it demonstrate that Mansfield selected the most cost-effective service offering.

24. Mansfield also now argues in its Petition for Reconsideration, for the first time, that its use of the term "District Wide" for describing the quantity and/or capacity of requested E-Rate services was justified because, according to Mansfield, this term is commonly used by E-Rate applicants,<sup>62</sup> has been approved by USAC on previous occasions,<sup>63</sup> and is supported by the *Ramirez Order*.<sup>64</sup> We reject each of these arguments. First, the issue is not whether an applicant can use the term "District Wide" in an FCC Form 470, but rather whether an applicant that uses the term "District Wide" also provides sufficient detail in its FCC Form 470 or an accompanying RFP to satisfy its competitive bidding obligations. That is, does it provide enough information to allow providers to reasonably determine the services for which an applicant is seeking bids? The facts underlying the *Ramirez Order* illustrate just this point. In *Ramirez*, the applicant's establishing FCC Form 470 used the term "district wide" to describe certain of the E-Rate services for which it sought bids, but for only those services where the FCC Form 470 indicated that an RFP was available.<sup>65</sup> The Bureau found that for the services at issue in the

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<sup>57</sup> See *Central Islip Order*, 26 FCC Rcd at 8640, para. 22 (using a state master contract was not sufficient to demonstrate compliance with the competitive bidding rules when the applicant did not provide evidence of carefully considering other submitted bids). See also 47 CFR § 54.511 (requiring applicants carefully consider all bids submitted and select the most cost-effective service offering).

<sup>58</sup> Supplemental Brief at 4.

<sup>59</sup> *Request for Review of the Decision of the Universal Service Administrator by Winston-Salem/Forsyth County School District et al.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26457, 26462, para. 14 (2003) (*Winston-Salem Order*).

<sup>60</sup> Supplemental Brief at 4-5.

<sup>61</sup> See, e.g., *Winston-Salem Order*, 18 FCC Rcd 26462, para. 14 (noting that a broad FCC Form 470 "may well stifle competition among service providers").

<sup>62</sup> Petition for Reconsideration at 13-17.

<sup>63</sup> *Id.* at 17-23.

<sup>64</sup> Supplemental Brief at 3-4; 2016 Petition for Reconsideration at 8; *Request for Review of a Decision of the Universal Service Administrator by Ramirez Common School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 8430 (WCB 2011) (*Ramirez Order*).

<sup>65</sup> FCC Form 470 No. 557410000649343, Ramirez Common School District (posted Dec. 12, 2007) (Ramirez FCC Form 470) (listing "district wide" as the quantity and/or capacity for the categories of Internal Connections Other than Basic Maintenance and for Basic Maintenance of Internal Connections, both of which had indicated that an RFP was available).

appeal where the FCC Form 470 indicated that no RFP was available, the applicant specifically identified the quantity of the service, such as the number of phone lines, fax lines, and E-mail accounts, which would “provide potential bidders with sufficient information . . . to enable bidders to reasonably determine the needs of the applicant.”<sup>66</sup> Here, not only did Mansfield use the term “District Wide” to describe the quantity and/or capacity of its requested services, but it also failed to provide an RFP to potential bidders with the additional, necessary detail. Thus, consistent with the *Ramirez Order*, we must deny Mansfield’s appeal.

25. Mansfield also argues that other applicants use “District Wide” or a similar term in their FCC Forms 470. While reserving judgment on the use of this term in the other individual instances highlighted by Mansfield, as with any other rule violation, other applicants’ alleged rule violations can neither excuse nor justify Mansfield’s failure to comply with long-held Commission rules. Even if we assume that Mansfield was under the erroneous impression that providing no more specificity than “District Wide” about the services for which it was seeking E-Rate support was sufficient, there is no basis on which to grant Mansfield’s appeal. Indeed, we have consistently held that even when a party receives erroneous or conflicting advice from USAC, the Commission is not estopped from enforcing its rules in a manner that is inconsistent with the provided advice, chiefly when relief is contrary to a rule.<sup>67</sup>

26. Finally, we deny Mansfield’s waiver request and affirm our decision that Mansfield has not demonstrated the existence of any special circumstances warranting a waiver of the Commission’s competitive bidding rules. The Commission may exercise its discretion to waive a rule where the particular facts demonstrate that (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>68</sup> Here, Mansfield can meet neither of the elements necessary to support a successful waiver request. Mansfield argues that it is entitled to a waiver because it relied in good faith on advice from its E-Rate consultant regarding the use of the term “District Wide” in FCC Form 470 service descriptions.<sup>69</sup> But as discussed above, reliance on erroneous advice from USAC does not excuse Mansfield from complying with the Commission’s competitive bidding rules,<sup>70</sup> and this rule certainly extends to erroneous advice received from non-government actors, such as private E-Rate consultants.

27. Mansfield also argues that the Commission should waive its competitive bidding rules and deem Mansfield’s use of the term “District Wide” as a “good faith error” because this error “did not undermine the competitive bidding process.”<sup>71</sup> Mansfield points to past orders in which the Bureau granted requests for review after finding that there was no harm to the competitive bidding process,<sup>72</sup> and

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<sup>66</sup> *Ysleta Order*, 18 FCC Rcd at 26410, para. 7.

<sup>67</sup> See, e.g., *Application for Review of a Decision of the Universal Service Administrator by Challis Joint School District #181; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 3812, 3814, para. 5 (WCB 2011) (*Challis Order*) (upholding decision of USAC to rescind funding commitment where applicant failed to comply with the Commission’s competitive bidding rules, despite applicant claiming that USAC gave it inaccurate and conflicting information); *Request for Review of the Decision of the Universal Service Administrator by Lombard School District 44; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13166, 13168, para. 6 (CCB 1999).

<sup>68</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>69</sup> Petition for Reconsideration at 19-20.

<sup>70</sup> *Challis Order*, 26 FCC Rcd at 3814, para. 5.

<sup>71</sup> Petition for Reconsideration at 21-22; Supplemental Brief at 4-5.

<sup>72</sup> Petition for Reconsideration at 21. Supplemental Brief at 4. See *Request for Review of a Decision of the Universal Service Administrator by Queen of Peace High School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16466 (WCB 2011); *Requests of Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al.; Schools and Libraries*

(continued....)

an order granting a request for waiver upon finding that the applicant selected the lowest-cost vendor despite violating the Commission's price as the primary factor rule.<sup>73</sup> Mansfield also discusses the *Bishop Perry Order*,<sup>74</sup> which relates to ministerial and clerical errors, arguing that if the district made an error, there was "no fraud, abuse, misuse of funds, or material failure to comply with program requirements."<sup>75</sup>

28. Contrary to the findings in the orders cited by Mansfield, we find that Mansfield's competitive bidding violation did undermine the competitive bidding process. Unlike the ministerial and clerical violations in the *Bishop Perry Order*, the violation here was a substantive violation of the program's fundamental competitive bidding requirements.<sup>76</sup> By posting FCC Forms 470 devoid of the necessary detail to enable potential providers to determine the school district's needs and submit responsive bids, Mansfield undermined the competitive bidding process and, in so doing, it prevented the district, USAC, and the Commission from being able to determine whether Mansfield had chosen the most cost-effective offering as required by the program rules. The Commission has long held that competitive bidding is fundamental to the integrity of the E-Rate program,<sup>77</sup> and it has declined to grant waivers for substantive competitive bidding violations without special circumstances.<sup>78</sup>

29. Lastly, Mansfield argues that it is entitled to a waiver because no E-Rate funds were misused, and the denial and rescission of E-Rate funds would cause undue financial hardship to the school district.<sup>79</sup> It also argues that Mansfield could have revised its forms if the issue had been identified earlier.<sup>80</sup> We are sympathetic to the economic consequences of funding rescissions and denials, and would rather prevent applicant error than catch it after-the-fact. At the same time, USAC and the Commission have fundamental and ongoing obligations to protect the integrity of the E-Rate program and to protect the Universal Service Fund against waste, fraud, and abuse and to rescind funding in the event of competitive bidding violations.

30. This matter arose from a USAC special compliance investigative review conducted after

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*Universal Service Support Mechanism*, CC Docket No. 02-6; Order, 23 FCC Rcd 15510 (WCB 2008). Both of these orders granted the underlying request for review after finding no violation of the competitive bidding requirements, rather than granting a waiver of a competitive bidding rule in the face of a violation by the applicant.

<sup>73</sup> Supplemental Brief at 4. *Requests for Review of Decisions of the Universal Service Administrator by Euclid City School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 14169 (WCB 2012).

<sup>74</sup> Petition for Reconsideration at 22. *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5326-27, paras. 23-24 (2006) (*Bishop Perry Order*).

<sup>75</sup> See Petition for Reconsideration at 22-23.

<sup>76</sup> See generally *Bishop Perry Order*, 21 FCC Rcd at 531-22, paras. 1-2 (finding special circumstances warranting a waiver for applicants making procedural violations).

<sup>77</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9076-80, paras. 570-80 (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Fourth Order on Reconsideration*, 13 FCC Rcd at 5425-26, para. 185 (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).

<sup>78</sup> See *Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 29 FCC Rcd 9289, 9291-92, paras. 7-8 (WCB 2014) (*Chicago Public Schools Order*) (finding that petitioner did not demonstrate the existence of special circumstances to warrant deviation from the general rule when petitioners did not comply with the competitive bid requirements and ensure that the requested services were the most cost-effective).

<sup>79</sup> Petition for Reconsideration at 22-24.

<sup>80</sup> Supplemental Brief at 5.

receiving notice of possible competitive bidding violations by Mansfield in 2013. USAC can and does conduct special compliance investigative reviews when it believes certain circumstances warrant a more detailed review of an applicant's compliance with applicable rules, regulations, policies, and precedents. Special compliance investigative reviews and other audits are necessary tools to ensure program integrity and to detect and deter waste, fraud, and abuse.<sup>81</sup> When they reveal instances where funds were improperly disbursed, the Commission, and USAC, as directed by the Commission, have a responsibility to recover such funds. Having discovered that competitive bidding violations occurred not only in funding year 2013, but also in funding years 2011 and 2012, USAC appropriately sought recovery of the funds that had been improperly disbursed. Moreover, the Commission has been clear that while it "appreciate[s] that it may impose some hardship to make repayment in some situations, a statutory or rule violation cannot be absolved merely because the nature of the violation does not implicate waste, fraud or abuse."<sup>82</sup> In this case, Mansfield's FCC Form 470's failure to describe with sufficient specificity the services on which it sought bids placed the program at great risk for waste, fraud and abuse. Even assuming *arguendo* that there is no evidence in fact of waste, fraud, or abuse by Mansfield, limiting recovery to situations involving waste, fraud, or abuse would place the Commission in the position of condoning and rewarding violations of the program's rules.<sup>83</sup> Thus, because Mansfield has not demonstrated any special circumstances or advancement of the public interest that warrant deviation from the Commission's competitive bidding rules, its request for a waiver is denied.<sup>84</sup>

31. For these reasons, we affirm our decisions in the *June 2015 and July 2016 Streamlined Request Resolution Public Notices* and find that Mansfield violated the Commission's competitive bidding rules by failing to post an FCC Form 470 with adequate specificity.<sup>85</sup> We direct USAC to continue seeking recovery against Mansfield.

#### IV. ORDERING CLAUSES

32. 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, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106 and 54.722(a), that the Petitions for Reconsideration filed by Mansfield ARE DISMISSED to the extent Mansfield has raised the same arguments, and as to the newly-raised argument and as an independent and alternative basis for the decision as to its other arguments, the Petitions for Reconsideration are also DENIED on the merits.

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<sup>81</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Fifth Report and Order*, 19 FCC Rcd 15808, 15813, para. 13 (2004) (*Fifth Report and Order*).

<sup>82</sup> *Id.* at 15817-18, para. 29.

<sup>83</sup> *Id.*

<sup>84</sup> See *Chicago Public Schools Order*, 29 FCC Rcd 9289 (denying petition for reconsideration where petitioner failed to present special circumstances that warranted deviation from the general rule).

<sup>85</sup> *June 2015 Streamlined Request Resolution Public Notice*, 30 FCC Rcd at 7060, n.11; *July 2016 Streamlined Request Resolution Public Notice*, 31 FCC Rcd at 8609, n.19.

33. IT IS FURTHER 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, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.106, that USAC SHALL CONTINUE its recovery actions against Mansfield to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau