Before the Federal Communications Commission  
Washington, D.C.

In the Matter Of  

Schools and Libraries  
Universal Service Support Mechanism  

Request for Review by  
Calhoun County School District  
of the Funding Decision by the  
Universal Service Administrative Company  

REQUEST FOR REVIEW BY CALHOUN COUNTY SCHOOL DISTRICT  
OF THE FUNDING DECISION BY THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

Calhoun County School District (Calhoun County) hereby respectfully requests a review 
of the Universal Service Administrative Company (USAC) decision to deny Schools and  
Libraries universal service funding to Calhoun County for its Funding Year 2015 FCC Form 417 
application number 1030400.1

For the reasons set forth below, the Wireline Competition Bureau (the Bureau) should  
grant any waivers necessary or warranted and remand Calhoun County’s FY 2015 funding  
requests to USAC for immediate approval. Because the facts in this appeal are nearly identical  
to the facts in waivers the Commission and Bureau have previously granted, we also request an  
expedited review and inclusion in the next available Public Notice short order to be released by  
the Bureau.2

1 Because Calhoun County seeks a waiver of Commission rules, it is filing this request with the  
Commission instead of first filing with the USAC, as allowed by Commission rules. 47 C.F.R. §54.719(c)  
(parties seeking a waiver of the Commission rules shall seek relief directly from the Commission).
2 See 47 C.F.R. § 54.722(a) (delegated authority for the Wireline Bureau to decide appeals as long as they  
do not raise novel questions of fact, law or policy); see also Streamlined Process for Resolving Requests  
for Review of Decisions by the Universal Service Administrative Company, CC Docket Nos. 96-45 and
USAC denied Calhoun County’s request for funding because USAC claims Calhoun County did not have a legally binding agreement or contract in place prior to filing its FCC Form 471. Calhoun County did have a legally binding agreements in place with its two service providers when it signed it FCC Form 471. Specifically, Calhoun County’s service providers had offered written, definite terms, and the Calhoun County Board of Education had accepted those offers with a documented vote to approve the contract. Further, even if Calhoun County did not have such agreements in place, it is not in the public interest to deny a small rural school district nearly $200,000 in funding for a fiber connection – its entire Category 1 request – simply because it signed its formal contracts four days after filing its FCC Form 471, particularly where Calhoun County diligently filed its application one week before the deadline. Had it waited until the last minute to file, the unnecessary signing would have taken place prior to the filing. Its diligence in getting its application filed in a timely fashion should not be cause to deny Calhoun County its needed funding. Thus, consistent with Commission precedent, we respectfully ask that the Commission grant the requested waiver.

I. Background

Calhoun County is a small school district in rural Mississippi. For funding year 2015, it posted the relevant FCC Form 470 seeking bids for E-rate eligible services on February 19, 2015. Because it posted its FCC Form 470 on February 19, 2015, Calhoun County had an allowable contract date of March 19, 2015. Calhoun County selected the bid winners after the bids were due March 19, 2015, and informed the two winning vendors via phone on March 23,
2015. The two winning bidders were TDS Telecom d/b/a Calhoun City Telephone Company and Bruce Telephone Company.6

On April 7, 2015, Brad Skinner, Calhoun County’s technology director, submitted a letter to the Calhoun County Board of Education (Calhoun County BOE), requesting approval of the two contracts.7 The Calhoun County BOE typically only meets once a month; its next scheduled meeting was April 27, 2015. To approve the contracts before the E-rate application deadline of April 16, 2015, the Calhoun County BOE held a special meeting, via teleconference, on April 8, 2015 to approve the contracts.8 This meeting was documented in two ways. First, the BOE Secretary noted that the contracts were approved by stamping and dating the letter in which Mr. Skinner requested BOE approval.9 Second, the April 8 special teleconference meeting is noted in the minutes of the BOE’s regular April 27 board meeting.10

Mr. Skinner, believing that the contract approval by the BOE was sufficient to demonstrate a “legally binding agreement” as required by Commission rules, moved forward with the submission of Calhoun County’s FCC Form 471 on Thursday, April 9, while attending a state E-rate training.11 Mike Moore, the Calhoun County superintendent, was authorized by the school board vote to sign the two contracts any time after the April 8 school board meeting. Mr.

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6 TDS Telecom and Bruce Telephone Company bids. See Exhibits C and D.
7 The letter requesting approval is mistakenly dated February 16, 2015. That is because Mr. Skinner used his previously drafted letter requesting Board approval of the RFP as the template for the letter requesting Board approval of the contracts. See Exhibit E, for the actual February 16, 2015 letter requesting approval of the RFP, and Exhibit F, for the April 7, 2015, letter requesting Board approval of the contracts themselves. A February 16, 2015 letter requesting approval of the contracts was not possible as the bids had not even been posted at that time.
8 Calhoun County BOE minutes. See Exhibit G.
9 April 7, 2015 letter requesting BOE approval of the contracts. See Exhibit F.
10 Calhoun County BOE minutes. See Exhibit G.
11 Calhoun County FCC Form 471 Application No. 1030400 (Calhoun County 471). See Exhibit H.
Moore signed the contracts just two business days after the FCC Form 471 was filed – on the following Monday, April 13, 2015.  

Calhoun County sought E-rate funding for lit fiber Ethernet service.  

Calhoun County submitted two funding requests totaling $216,143 before the E-rate discount was applied.  

After its 90 percent discount was applied, the E-rate funding requested was $194,528.  

USAC denied Calhoun County’s request for funding on September 14, 2015.  

The denial letter stated that Calhoun County did not have a legally binding agreement or contract in place prior to filing its FCC Form 471. Calhoun County hereby appeals that decision of USAC and requests the necessary waivers as determined by the Commission to receive a commitment for the full amount of the funding request.  

II. The Commission Should Grant Calhoun County’s Request for Waiver of Commission Rule 54.504(a).  

The Commission should grant Calhoun County’s request for waiver for three reasons.  

First, Calhoun County complied with section 54.504(a) because it had legally binding agreements in place with its two service providers when it filed its FCC Form 471. The service agreements in place with its two service providers when it filed its FCC Form 471. The service  

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12 Calhoun County Contract with Bruce Telephone Company, Inc., dated April 13, 2015, see Exhibit I, and Telecommunication Service Agreement with TDS Telecom dated April 13, 2015. See Exhibit J.  
13 Calhoun County RAL, see Exhibit B and Calhoun County 471, see Exhibit H.  
14 Id.  
15 Id.  
16 See Funding Commitment Decision Letter (FCDL) from USAC to Brad Skinner, Technology Director, Calhoun County School District, dated Sept. 14, 2015. See Exhibit K.  
17 Id. The FCDL contains a heading stating that the “28 Day Waiting Period is Violated” but then describes the reason for the denial as “no legally binding agreement or contract was in place when the FCC Form 471 was filed.” After consultation with USAC staff, it is our understanding that the 28 Day notation is internal USAC coding that includes “no contract” issues and that USAC did not base the denial on a violation of the requirement in Section 54.503(c)(4) of the Commission’s rules that an applicant must wait 28 days after posting its FCC Form 471 before selecting winning bidders. 47 C.F.R. § 54.503(c)(4).  
18 A party has 60 days after the date of the USAC decision to deny funding to file its appeal with USAC. 47 C.F.R. § 54.520(a). USAC issued the funding denial on September 14, 2015; as such, this filing is being made timely under Commission rules.
providers offered their services, with definite terms and pricing, and the Calhoun County BOE accepted the offers at a special BOE meeting to award the contracts. Second, even if Calhoun County could not demonstrate it had legally binding agreements prior to filing its FCC Form 471, the Commission and Bureau has granted appeals under nearly identical circumstances where applicants signed their contracts a few days after filing. Third, even if Calhoun County did not meet the rule’s requirements, strict adherence to the Commission’s rules in Calhoun County’s case would not serve the public interest.

A. Calhoun County Had a Legally Binding Agreement in Place When It Submitted Its FCC Form 471

The Commission’s rules require applicants to have a signed contract or other “legally binding agreement” in place prior to submitting their FCC Forms 471 to USAC.19 In the First Modernization Order, when adopting this rule, the Commission acknowledged that “there are many instances where applicants have an agreement in place with their service provider or are already receiving services, but have difficulty obtaining signatures prior to the submission of their FCC Forms 471.”20 The denial of Calhoun County’s funding is exactly the situation the Commission tried to prevent when it revised its rules to allow “legally binding agreements” in addition to the requirement of a “signed contract”.21 While Calhoun County had not yet signed the contracts when it submitted its FCC Form 471, it did have contracts or legally binding agreements in Mississippi and has therefore met the requirements of section 54.504(a).22

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19 See 47 C.F.R. § 54.504(a).
21 Id.
22 In the absence of a Commission definition of “legally binding agreement,” it is instructive to turn to the law of the state where the agreement was effectuated to determine whether the agreement was legally binding.
In Mississippi, a legally binding contract exists whenever the following elements are met:
(1) two or more parties; (2) consideration, (3) an agreement that is sufficiently definite; (4) parties with the legal capacity to make a contract; (5) mutual assent, and (6) there is no legal prohibition precluding contact formation.\(^{23}\)

With respect to Calhoun County and its two service providers, Bruce Telephone Company and TDS Telecom, the elements of contract formation were met. First, Calhoun County and the respective service providers constitute the parties to the contract. Second, consideration was present as Calhoun County was paying for the services provided by the telecommunications carriers. Third, the agreement was “sufficiently definite.”\(^{24}\) Calhoun County had solicited bids from service providers. Those bids contained all of the relevant information regarding price, location of performance, services to be provided, and other material terms.\(^{25}\) Fourth, the carriers and the school district had the legal capacity to enter into the contract.

Fifth, the parties mutually assented to the contract. Mutual assent is typically demonstrated with an offer and an acceptance of that offer. As the Mississippi Supreme Court has noted, “[i]t is a well-settled principle of law that” acceptable of a contract may be shown by a party’s conduct and that conduct may will be “as binding on him as had he endorsed his assent in formal writing.”\(^{26}\) Bruce Telephone and TDS Telecom made offers to Calhoun County when they submitted their bids, pursuant to the posting of the FCC Form 470.\(^{27}\) Calhoun County similarly demonstrated by its actions – a BOE vote on April 8 – its approval and acceptance of the service providers’ offers.

\(^{23}\) *Woodruff v. Thames*, 143 So.3d 546, 554 (Miss. 2014).
\(^{24}\) *Woodruff v. Thames*, 143 So.3d 546, 554 (Miss. 2014); *Rotenberry v. Hooker*, 864 So2d 266, 270 (Miss. 2003) (price is a required term).
\(^{25}\) Exhibits C and D.
\(^{26}\) *Edwards v. Wurster Oil Co., Inc.* 688 So.2d 772, 775 (Miss. 1997).
\(^{27}\) *Id.*
Further, Mississippi courts have found that public boards speak through their minutes.\textsuperscript{28} In \textit{Thompson v. Jones Cty. Community Hospital}, the issue was whether a public hospital had a contract with its executive director.\textsuperscript{29} The court looked to the minutes of the board for evidence of the contract. The court noted that “[w]hen official authority is conferred upon a board or commission . . . , as a general rule, the decisions to be executed or the contracts to be awarded by the board must be determined or decided upon only in or at a lawfully convened session, and the proceedings must be entered upon the minutes of the board or commission.”\textsuperscript{30} Sixth, there is no legal prohibition on formation of the contract. Such a prohibition would exist, for example, in the case of a contract to perform an illegal act.

Here, the acts necessary to create the legally binding agreement occurred at a BOE lawful special session prior to the filing of the FCC Form 471. The BOE’s decision legally bound the school district to enter into the contracts.\textsuperscript{31} The superintendent’s signing of the contracts was purely ministerial as the legally binding decision to enter the contract had already been made by the BOE. Therefore, Calhoun County had a legally binding agreement in place when it filed its FCC Form 471, and met the requirements of section 54.504(a) of the Commission’s rules.

The Mississippi Statute of Frauds, which sometimes requires contracts with a term of more than one year to be in writing and signed by the party against whom the contract would be enforced, does not alter the conclusion that Calhoun County had a legally binding agreement prior to the FCC Form 471 filing.\textsuperscript{32} While a signature is one way to show the parties’ mutual assent, Mississippi courts are clear that a “signature is not always essential” to finding a binding

\textsuperscript{28} \textit{Thompson v. Jones Cty. Community Hospital}, Miss. 352 So. 2d 795 (Miss. 1977).
\textsuperscript{29} \textit{Id.} at 795.
\textsuperscript{30} \textit{Id.} at 796.
\textsuperscript{31} The vote is noted in the BOE minutes of its April 27 Board meeting.
\textsuperscript{32} Miss. Code Ann. 15-3-1 (2015).
agreement.\textsuperscript{33} Instead, “whether the signing of the instrument is a condition precedent to its becoming a binding contract usually depends on the intention of the parties. The object of a signature is to show mutuality or assent, but these facts may be shown in other ways, as, for example, by the acts or conduct of the parties.”\textsuperscript{34} Here, as noted above, the parties demonstrated through their actions that they intended to have a legally binding agreement. The service providers submitted bids for the service, and the BOE voted to approve the bid awards. None of the parties have attempted to revise the contract or declare they are not bound by it.

Furthermore, the Statute of Frauds is not relevant to the determination as to whether there was a legally binding agreement for the purpose of compliance with E-rate requirements. The Statute of Frauds “‘does not make a contract void’ or prevent the contract from being formed.”\textsuperscript{35} The Statute of Frauds instead “only allows the defense to its enforcement which defense is personal to the defendant.”\textsuperscript{36} Therefore, if all the parties agree they are bound by the contract, it will remain valid and enforceable. While theoretically the Mississippi Statute of Frauds could have been used as a defense to non-performance by one of the parties, that personal defense was never exercised and it expired four days later when the written contract was signed. Instead, all of the facts show that the parties intended the agreements to be legally binding on April 8. No party attempted to void the agreement after the offer and formal acceptance by the Calhoun County BOE. In fact, the parties took steps just a few days after the BOE vote to memorialize the agreement with a written contract. Therefore, the contracts were valid from the time the BOE voted to award the bids, even though the contracts had not yet been signed.

\textsuperscript{33} \textit{Turney v. Marion County Board of Education}, 481 So.2d 770, 774 (Miss. 1985); \textit{Heritage Bldg. Property, LLC v. Prime Income Asset Management, Inc.}, 43 So.3d 1138 (Miss. Ct. App. 2009).
\textsuperscript{34} \textit{Turney}, 481 So.2d at 744.
\textsuperscript{35} \textit{Heritage Bldg.} at 1145 (quoting \textit{Davis v. Stegal}, 151 So.2d 813, 815 (Miss. 1963).
\textsuperscript{36} \textit{Id.}
B. Consistent with Commission Precedent Granting Waivers in Similar Situations, Calhoun County Signed Its Contracts a Few Days After It Filed Its FCC Forms 471.

The Commission has a long history of granting appeals of funding denials with facts exactly like those of Calhoun County. In the First Modernization Order, the Commission noted that many applicants have sought a waiver of the Commission’s rule requiring a signed contract prior to the submission of their FCC Forms 471.37 First, prior to changing its rule to allow legally binding agreements in addition to signed contracts, the Commission granted appeals where the applicant had entered into a contract or legally binding agreement. Second, the Commission has granted appeals even where legally binding agreements or contracts did not yet exist.

The Commission “has consistently waived the requirement of a signed contract for petitioners who have demonstrated that they had a legally binding agreement in place for the relevant funding year.”38 Specifically, in the First Modernization Order, the Commission pointed to several prior orders for support. In Bayfield School District, the Commission found that four applicants had a legally binding agreement in place when they filed their FCC Forms 471 and granted a waiver of the rule that, at that time, required a signed contract.39 Similarly, in Barberton City School District, several applicants had a legally binding agreement in place when they submitted their FCC Forms 471.40

37 First Modernization Order at para. 203.
38 Id.
Here, Calhoun County had a legally binding agreement in place, as described above. In fact, the *First Modernization Order* revised Commission rules in order to prevent the denial of applications exactly like that of Calhoun County, when applicants had a legally binding agreement in place but had not yet completed the contractual niceties. As such, the Commission should find that Calhoun County met the requirements of the rule, or waive it, as necessary, to be consistent with prior Commission and Bureau decisions.

Even if Calhoun County did not have legally binding agreements in place, the Commission should still grant Calhoun County’s request for waiver. In *Barberton City*, Urban Day School signed its contract five days after filing its FCC Form 471. Similarly, also in *Barberton City*, Kings River Elementary School District signed its contract 10 days after filing its FCC Form 471. Neither had a legally binding agreement in place prior to filing the FCC Forms 471. The Bureau noted that, in those cases, the school staff either made a mistake or misunderstood the rules, and waived the rule for both schools. Calhoun County signed its contract with both service providers only four days—and only two business days—after filing the FCC Form 471, even closer to the filing of the FCC Form 471 than in Urban Day School and Kings River Elementary School District. Therefore, the Commission should grant Calhoun County’s request for waiver, consistent with *Barberton City*, *Bayfield* and other Bureau orders.

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41 *Barberton City Order* at para. 6.
42 *Barberton City Order* at para. 6.
C. Granting Calhoun County’s Waiver is in the Public Interest Because, Even if the Agreement Requirement Was Not Met, Denial of Calhoun County’s Entire Category 1 Funding Request Is Inconsistent With E-rate Program Goals.

Finally, granting Calhoun County’s appeal is in the public interest. Any of the Commission’s rules may be waived if good cause is shown.\(^{44}\) The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.\(^{45}\) In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.\(^{46}\)

As the Commission has noted in deciding E-rate requests for waivers, simple “mistakes do not warrant the complete rejection” of E-rate applications.\(^{47}\) Further, the Commission has noted in an order on the contract requirement, as long as there is no evidence of a misuse of funds, “rigid adherence to certain E-rate rules and requirements that are ‘procedural’ in nature does not promote the goals of section 254 of the [Telecommunications] Act . . . and therefore does not serve the public interest.”\(^{48}\)

At most, the situation Calhoun County finds itself in is exactly that kind of procedural error noted in \textit{Adams County} and exactly the type of situation the Commission tried to remedy when revising section 54.504(a) of its rules last year.\(^{49}\) The Commission has recognized that school districts and libraries often require flexibility when trying to comply with Commission rules and their own policies and procedures.\(^{50}\) Calhoun County thought that its BOE vote meant

\(^{44}\) 47 C.F.R. § 1.3.
\(^{46}\) \textit{WAIT Radio v. FCC}, 418 F.2d 1153, 1159 (D.C. Cir. 1969); \textit{Northeast Cellular}, 897 F.2d at 1166.
\(^{48}\) \textit{Adams County Order} at para. 10.
\(^{49}\) \textit{First Modernization Order} at para. 203.
\(^{50}\) \textit{Id.}
that it could move forward with its Form 471 submission. Indeed, Calhoun County was trying to be diligent in submitting its FCC Form 471 early, instead of waiting until just before the deadline. It could have waited another week to file, at which point the contracts would have been signed by both parties.

Finally, while Commission regulations and program procedures are important for an orderly administration of E-rate, denying Calhoun County its entire category 1 funding request for FY 2015 would not serve the public interest. Calhoun County is a school in rural Mississippi with a 90 percent discount rate.\(^5^1\) This is the first year it has been able to obtain fiber from its carriers. One of the Commission’s goals for the E-rate program is to expand the reach of fiber to improve access to the Internet for schools and libraries.\(^5^2\) To deny Calhoun County’s funding request would be inconsistent with program goals and therefore would not serve the public interest.

### III. Conclusion

For the foregoing reasons, the Commission should grant Calhoun County’s request for waiver.

Respectfully submitted,

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October 21, 2015

\(^5^1\) See Calhoun County RAL. See Exhibit B.  
\(^5^2\) First Modernization Order at para. 26.