November 13, 2015

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: Appeal of a Decision of the Universal Service Administrator, CC Docket No. 02-6

Applicant Name: Cardinal Hayes High School
Billed Entity Number: 10416
Funding Year: 2010
Form 471 Application Number: 769038
Funding Request Number: 2080256

Appeal

Background

In Funding Year 2009, Cardinal Hayes High School hired Performance Connectivity, Inc. (PCI) as their Basic Maintenance Provider. During the Form 470 procurement process for Funding Year 2010-2011, Cardinal Hayes High School didn’t receive any bids for maintenance services. After the 28 day waiting period, the school decided to continue receiving maintenance services from PCI and signed a letter/contract (Exhibit 1) before submitting the Form 471.

Discussion

During a special compliance review, USAC requested documentation showing that there was a binding agreement between both parties concerning FRN 2080256. USAC’s request stated the following “In general, E-rate rules do not require a signature on contracts from a service provider. However, in order for a binding agreement to be in place prior to the submission of the Form 471, there needs to be some kind of documentation to show that the service provider agreed to be bound by terms set forth by the applicant.”
The contract provided is valid for the following reasons: 1) Under FCC rules, the signature by the applicant is sufficient. 2) As a contingent agreement, it is in a form provided on the NYS E-rate website (http://ny.e-ratecentral.com/resources/default.asp) that was vetted by NYSED.

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Previous FCC guidance on contracts eased the burden on applicants and at the same time relied on state guidance determining each state’s legally binding agreement definition. In the recent E-Rate Modernization Order¹, the FCC reiterated that 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.”

Cardinal Hayes High School has offered USAC monthly invoices indicating consistency of maintenance services being provided every month before and after the submission of the Form 471. In addition, the school has also offered a certified letter from the vendor stating that PCI was well aware of the school utilizing their services for funding year 2010-2011.

In conclusion, Cardinal Hayes High School and PCI had a legally/verbally binding agreement for funding year 2010 defined by NYS law. This is validated with actual maintenance services being provided during the funding year and the school being reimbursed. The school still utilizes PCI as their maintenance provider in the present day.

We hope to have the opportunity to provide a certified letter from PCI acknowledging the contract (Exhibit 1) and provide invoices validating their funding request in 2010.

We respectfully ask USAC to rescind this denial and approve the FRN split as requested.

Thank you.

Sincerely,

Shaneka N. Bratton
E-rate Coordinator
516-801-7806
sbratton@e-ratecentral.com

¹ WC Docket No. 13-184, Released July 23, 2014, Paragraph 203
2/17/2010

Performance Connectivity, Inc.
181 Westchester Avenue
Port Chester, NY 10573

This letter will confirm our decision to purchase LAN network maintenance yearly @ 25,200 from your company during the next E-rate funding year (07/01/2010 to 06/30/2011).

The procurement of all basic maintenance will be dependent upon the following conditions:

1. Final approval of next year's fiscal budget
2. Contract confirmation by next year's school board
3. Award of associated E-rate funding

We look forward to working with Performance Connectivity, Inc. on this project.

Sincerely,

[Signature]

Stephen Michel
Director of Finance
Cardinal Hayes High School