

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

In the Matter of )
)
Petition for Reconsideration of a Decision of the )
Wireline Competition Bureau )
)
Lazo Technologies, Inc., et al. )
)
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER ON RECONSIDERATION

Adopted: November 29, 2011

Released: November 29, 2011

By the Commission:

I. INTRODUCTION

1. In this order we deny a petition for reconsideration (Petition) filed by Lazo Technologies, Inc., Hill Professional Services, and Advanced Technology Solutions South (Petitioners).1 Petitioners ask that the Commission reverse an August 12, 2009 order in which the Wireline Competition Bureau (Bureau) upheld a decision by the Universal Service Administrative Company (USAC) to deny payment on outstanding invoices for work Petitioners performed for the Dallas Independent School District (DISD) under the Commission’s schools and libraries universal service support program, also known as the E-rate program.2 The Bureau determined that USAC appropriately denied payment for the invoices at issue because the underlying contract for the E-rate services was tainted by a bribery scheme that violated the Commission’s competitive bidding requirements and program rules.3 We affirm the Bureau’s decision and deny Petitioners’ request for reconsideration.4

II. BACKGROUND

2. Petitioners were members of a consortium led by Micro Systems Engineering, Inc., also known as Micro Systems Enterprises, Inc. (MSE), (collectively, the MSE Consortium) that submitted the

1 Petition for Reconsideration of Bureau Order, Request for Review of a Decision of the Universal Service Administrator, CC Docket No. 02-6; (filed September 11, 2009) (Petition for Reconsideration); Supplement and Errata to Petition for Reconsideration, CC Docket No 02-6 (filed September 28, 2009) (Supplement).

2 Request for Review of Decision of the Universal Service Administrator by Lazo Technologies, Inc., et al, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-360412, 360904, 369205, 369537, CC Docket No. 02-6, Order, 24 FCC Rcd 10675 (2009) (Lazo Order).

3 Id.

4 We act on this Petition for Reconsideration pursuant to section 1.106(a) of our rules, which provides that petitions for reconsideration of final actions taken pursuant to delegated authority may be referred by such authority to the Commission for action. 47 C.F.R. §1.106(a).

winning bid to provide E-rate services to the Dallas Independent School District (DISD).<sup>5</sup> A federal investigation revealed that Frankie Wong, the co-owner and president of MSE and lead agent for the MSE Consortium, and Ruben Bohuchot, the former DISD Chief Technology Officer, were involved in a bribery and money laundering scheme that involved the contract for the provision of services eligible for E-rate funding awarded by the DISD.<sup>6</sup> USAC denied payment on the funding request because the bribery scheme between the lead agent for the MSE Consortium and the DISD violated the Commission's competitive bidding rules and tainted the underlying contract.<sup>7</sup> The unpaid funding request included outstanding invoices for a cabling project Petitioners performed pursuant to the contract for the provision of services eligible for E-rate funding between the MSE Consortium and the DISD.<sup>8</sup>

3. On May 11, 2009, Petitioners filed a request for review appealing USAC's decision.<sup>9</sup> Petitioners argued that they should receive the balance owed on the outstanding invoices because they completed the cabling project pursuant to their contract with the DISD, they were never involved in any fraudulent activity, USAC fully paid other suppliers and contractors that were part of the MSE Consortium and neither USAC nor the DISD ever notified Petitioners to cease work.<sup>10</sup>

4. On August 12, 2009, the Bureau issued an order that affirmed USAC's decision to deny payment for the invoices at issue based on violations of the competitive bidding process.<sup>11</sup> The Bureau determined that, because the DISD awarded the contract to the MSE Consortium outside of a fair and

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<sup>5</sup> See generally Letter from Tom Lazo, Sr., Lazo Technologies, Eddie Hill, Hill Professional Services and Billy Ratcliff, Advanced Technology Solutions South, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 11, 2009) (Request for Review); Petition for Reconsideration.

<sup>6</sup> See generally, *Indictment; United States v. Ruben B. Bohuchot*, Criminal Docket No. 3:07-CR-00167-L-1, Judgment (N.D. Tex. filed Nov. 14, 2008 and entered Nov. 17, 2008; amended Nov. 25, 2008); *United States v. Frankie Logyang Wong*, Criminal Docket No. 3:07-CR-00167-L-2, Judgment (N.D. Tex. Filed Nov. 14, 2008 and entered Nov. 17, 2008); see also *Former Dallas Independent School District (DISD) Executive and Houston Businessman Convicted in Federal Corruption Trial*, DOJ Press Release, July 10, 2008, [http://www.usdoj.gov/usao/txn/PressRel08/bohuchot\\_wong\\_DISD\\_convict\\_pr.html](http://www.usdoj.gov/usao/txn/PressRel08/bohuchot_wong_DISD_convict_pr.html) (last visited September 9, 2011) (DOJ Bohuchot/Wong Press Release). See *Indictment* at 8-9, 10-13, and 33; DOJ Wong Press Release at 2. Consistent with the Commission's rules, the Commission has debarred Messrs. Bohuchot and Wong from participating in the E-rate program. See Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Frankie Logyang Wong, Notice of Debarment, DA 09-1917, EB File No. 08-IH-5313, (dated Aug. 27, 2009); Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Ruben B. Bohuchot, Notice of Debarment, DA 09-1916, EB File No. 08-IH-5312 (dated Aug. 27, 2009).

<sup>7</sup> Letter from USAC, Schools and Libraries Division, to Stephanie M. Shaw-Green, Micro System Engineering (dated May 5, 2009); *Lazo Order*, 24 FCC Rcd at 10679-80, paras. 10-11.

<sup>8</sup> *Lazo Order*, 24 FCC Rcd at 10678, para 7 (citing Request for Review). Petitioners, MSE, and other service providers together formed a consortium to perform work for the DISD E-rate contract at issue. Frankie Wong, the President of MSE, entered into separate agreements with Petitioners and signed the master contract with the DISD on behalf of the consortium. See Supplement at Exhs. 2-4.

<sup>9</sup> Request for Review at 4. Petitioners sought payment for invoices totaling more than \$2.5 million for cabling work performed for DISD during funding year 2003. *Id.* at 5-6. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (USAC) may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>10</sup> Request for Review at 4.

<sup>11</sup> *Lazo Order*, 24 FCC Rcd 10675.

open competitive bidding process in violation of the Commission's rules and requirements, the parties to that contract were not entitled to any E-rate funding.<sup>12</sup>

5. On September 11, 2009, Petitioners filed a petition for reconsideration of the Bureau's order.<sup>13</sup> Petitioners do not dispute the Bureau's conclusion that the contract between the DISD and the MSE Consortium was tainted by the fraudulent activity of the lead agents for the MSE Consortium and the DISD or that the misconduct violated the Commission's competitive bidding requirements.<sup>14</sup> Rather, Petitioners continue to assert their previous claims that, because they had no knowledge of, or involvement in, the unlawful conduct between MSE and the DISD, they should not be punished for the misconduct of others.<sup>15</sup> Petitioners also argue that they completed the work for the DISD pursuant to the terms of the contract, that the DISD is now benefiting from the work performed by Petitioners, and that Petitioners are therefore entitled to the balance of payment due on unpaid invoices.<sup>16</sup> In addition, Petitioners argue that the decision by USAC and the Bureau to refuse payment for unpaid invoices covering work completed for the DISD constitutes a taking of property without just compensation in violation of the Fifth Amendment<sup>17</sup> and violates the Administrative Procedure Act (APA).<sup>18</sup> Finally, Petitioners ask the Commission to waive the competitive bidding rules to allow USAC to remit payment for the outstanding invoices at issue or to award payments to the petitioners under a *quantum meruit* theory.<sup>19</sup>

### III. DISCUSSION

6. We deny Petitioners' requests and affirm the Bureau's decision in the *Lazo Order*. We find that the Bureau correctly determined that Petitioners were not entitled to payment for the unpaid invoices related to the contract between the MSE Consortium and the DISD for the provision of services eligible for E-rate funding because the contract was tainted by the misconduct of the DISD and the lead agent of the MSE Consortium, which included Petitioners. As members of the MSE Consortium, Petitioners had a business relationship with MSE.<sup>20</sup> Whether Petitioners had actual knowledge of, or involvement in, the misconduct is unknown. However, we agree with the Bureau that Petitioners' alleged lack of knowledge or involvement in the misconduct between MSE and the DISD is not relevant to whether USAC correctly denied funding for work performed under the DISD contract.<sup>21</sup> To the extent Petitioners believe they have a valid claim for payment for work performed under the DISD contract, their proper recourse is through a civil action against MSE or the DISD.

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<sup>12</sup> *Id.* at 10680, para 12.

<sup>13</sup> *See generally*, Petition for Reconsideration and Supplement.

<sup>14</sup> Petition for Reconsideration at 9; Supplement at 2.

<sup>15</sup> Petition for Reconsideration at 2-10; Supplement at 2-9.

<sup>16</sup> Petition for Reconsideration at 4-7; Supplement at 1-7. Petitioners assert that a number of independent third parties investigated claims of misconduct and found no evidence of wrong-doing. Petition for Reconsideration at 3, 12-13. Petitioners argue that they completed their work based on these findings. *Id.* at 12-13.

<sup>17</sup> Petition for Reconsideration at 11.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 13-15.

<sup>20</sup> *See* Supplement, Exhs. 2-4. (Letters of Agreement between Petitioners and MSE).

<sup>21</sup> *Lazo Order*, 24 FCC Rcd at 10680, para. 12.

7. The competitive bidding process is a key component of the schools and libraries program.<sup>22</sup> To ensure that E-rate funds support services that satisfy the precise needs of an applicant and that applicants obtain services at the lowest rates, the Commission has adopted a number of requirements to promote a fair and open competitive bidding process, including the requirement that applicants base their solicitation for services on a fair and open competitive bidding process that is free from conflicts of interest.<sup>23</sup> To prevent an applicant from giving undue consideration to certain bids, USAC requirements prohibit service providers from being involved in the competitive bidding process other than as a bidder.<sup>24</sup> The Commission has stressed compliance with the competitive bidding rules to ensure the integrity of the E-rate program and protect it from waste, fraud and abuse.<sup>25</sup> To that end, the Commission has specifically stated that funding that is disbursed inappropriately due to violation of our competitive bidding requirements must be recovered.<sup>26</sup> Because the funding for the DISD E-rate project was improperly awarded based on a tainted contract, USAC properly denied additional payments on invoices related to the contract, and is under a legal obligation to recover monies improperly disbursed.

8. At the core of Petitioners' claim is their continued assertion that they were independent subcontractors who did not have knowledge of, or involvement in, the misconduct that occurred between MSE and the DISD.<sup>27</sup> Petitioners argue that Commission precedent limits punishment for misconduct to

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<sup>22</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15816, para. 21 (2004) (*Schools and Libraries Fifth Report and Order*). The Commission's rules provide that, in order to qualify for funding under the E-rate program an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support and must comply with all applicable state and local competitive bidding requirements. 47 C.F.R. § 54.504. The Commission's rules provide one exception to the competitive bidding requirement for existing, binding contracts signed on or before July 10, 1997. See 47 C.F.R. § 54.511(c).

<sup>23</sup> 47 C.F.R. §§ 54.504, 54.511; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078-80, paras. 575-79 (*Universal Service First Report and Order*) (subsequent history omitted); *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15816, para. 21; see also *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, *Federal-State Joint Board on Universal Service*, SPIN-143006149, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4032-33, para. 10 (2000) (*MasterMind Order*); see also *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al.*, *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos. 321479, et al., CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26434, para. 60 (2003) (*Ysleta Order*); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries, Universal Service Support Mechanism*, SPIN-143010002, CC Docket No. 02-6, Order, 22 FCC Rcd 4950, 4952-53, para. 6 (Wireline Comp. Bur. 2007); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al.*, *Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-289493, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 2784, 2790-92, paras. 16-18 (Wireline Comp. Bur. 2008).

<sup>24</sup> See *MasterMind Order*, 16 FCC Rcd at 4032-33, para. 10. USAC publishes these requirements on its website and in training materials on E-rate program compliance and were available to applicants when they executed their contract for the DISD project. See, e.g., USAC website, Step 3: Run an Open and Fair Competitive Bidding Process, <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx> (last visited September 9, 2011) (USAC Guidance, Open and Fair Competitive Bidding Process); see also, USAC website, USAC 2002 Training Materials, Program Compliance at 5-6. [http://www.usac.org/\\_res/documents/sl/ppt/2002/15%20Program%20Compliance.ppt#429,1](http://www.usac.org/_res/documents/sl/ppt/2002/15%20Program%20Compliance.ppt#429,1), PROGRAM COMPLIANCE Catriona Ayer and Ray Mendiola (last visited September 9, 2011) (USAC 2002 Training Materials).

<sup>25</sup> See, e.g., *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15816-17, paras. 29-21.

<sup>26</sup> *Id.* at 15816, para. 21.

<sup>27</sup> Petition for Reconsideration at 2-10; Supplement at 2-9.

parties involved in the misconduct and that the Bureau therefore erred in upholding USAC's decision to deny payments to Petitioners for work they completed on the DISD project.<sup>28</sup> As the Bureau explained in the *Lazo Order*, however, Petitioners' lack of knowledge or involvement in the misconduct is not dispositive of the question of whether Petitioners are entitled to the E-rate funding at issue.<sup>29</sup> Rather, as the Bureau correctly stated, funding was denied because the E-rate project was irreparably corrupted by conduct that violated the Commission's competitive bidding rules and requirements.<sup>30</sup>

9. Petitioners incorrectly assert that Commission precedent requires us to pay Petitioners because they were not the subject of allegations of waste, fraud, abuse, or other wrongdoing relating to the award of the underlying contract.<sup>31</sup> In particular, Petitioners' reliance on the Commission's decision in *Tennessee*<sup>32</sup> is misplaced.<sup>33</sup> In *Tennessee*, the Commission permitted the applicant to substitute another service provider (a "Good Samaritan") for the purpose of receiving and distributing universal service funds to subcontractors where USAC had halted processing of Tennessee's application because of ongoing law enforcement investigation into the relationship between the original service provider and the former governor of Tennessee.<sup>34</sup> While the Commission allowed payment to subcontractors in that case, there are important distinctions between the facts in *Tennessee* and the facts presented here. In reaching its decision in *Tennessee*, the Commission found that there were no allegations of wrongdoing related to the underlying contract for which the funds were awarded.<sup>35</sup> That is, the Commission based its decision in *Tennessee*, at least in part, on the absence of any problems with the award of the specific E-rate contract itself. The Commission specifically stated that USAC could disburse funding if it "determines that Tennessee's application for Funding Year 2002 otherwise complies with the rules of the schools and libraries program."<sup>36</sup> In the instant case, however, the underlying E-rate contract was tainted by a bribery scheme that violated the Commission's competitive bidding rules.<sup>37</sup>

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<sup>28</sup> Petition for Reconsideration at 8-10; Supplement at 6-7.

<sup>29</sup> *Lazo Order*, 24 FCC Rcd at 10680, para 12.

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

<sup>31</sup> See Petition for Reconsideration at 6-7 (citing a Commission decision to allow the E-rate applicant to substitute another service provider and receive E-rate funding based in part on a finding that there were no allegations of waste, fraud, abuse, or wrongdoing with respect to the subcontractors).

<sup>32</sup> *Request for Immediate Relief filed by the State of Tennessee, 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, 18 FCC Rcd 13581 (2003) (*Tennessee*).

<sup>33</sup> See Petition for Reconsideration at 6-9 (arguing that Petitioners are in the same position as the subcontractors in *Tennessee*); see also Letter from Walter Steimel, Jr. Loeb & Loeb, LLP, to Marlene Dortch, FCC, dated Oct. 29, 2010 at 2-3. (Petitioners' October 29 *ex parte*).

<sup>34</sup> The "Good Samaritan" policy is a procedure implemented by USAC that addresses specific situations in which a funding commitment has been approved, services have been rendered and paid for by the applicant at the undiscounted rate during a particular funding year, but the applicant is unable to receive reimbursement for the discount because the service provider originally selected by the applicant has gone out of business or has filed for bankruptcy before processing the reimbursement payment(s) for the applicant. *Tennessee*, 18 FCC Rcd at 13583, para. 6.

<sup>35</sup> *Tennessee*, 18 FCC Rcd at 13487, para. 18; see also *id.* at 13486, para. 14 (noting Tennessee's statement that it had not received any evidence "related to any State or ENA misconduct relating to the State's procurement processes or its selection of ENA as the winning bidder for the service contract").

<sup>36</sup> *Id.* at 13587, para. 19.

<sup>37</sup> *Lazo Order*, 24 FCC Rcd at 10677-78, paras 6-8 and accompanying footnotes.

10. A second factor on which the Commission relied in *Tennessee* is similarly absent here; that is, the Commission found little risk that permitting payment through a substitute provider would result in payment in violation of Commission rules.<sup>38</sup> Here, a grant of the requested relief to Petitioners would result in payment on a contract that was ineligible for E-rate funding because it was procured in a manner that violates the Commission's competitive bidding rules. There was no similar showing in *Tennessee* that the contract was ineligible for E-rate funding. Indeed the Commission explained that, if it were "ultimately determined that Tennessee, [the provider], or other party has violated any program requirements, the Commission shall take all appropriate actions to address that wrongdoing, including, if merited, seeking reimbursement of disbursed funds."<sup>39</sup> Petitioners' argument that the Bureau misconstrued the scope of the Commission's decision in *Tennessee* is therefore without merit.<sup>40</sup>

11. Petitioners' reliance on the Commission's decision in the *Schools and Libraries Fourth Report and Order* to argue that denial of further payment violates Commission precedent is similarly misplaced.<sup>41</sup> Petitioners allege that the *Schools and Libraries Fourth Report and Order* creates a rule that USAC can only seek recovery from the "party that actually engages in wrongdoing."<sup>42</sup> In that order, however, the Commission modified its previous policy of recovering improperly distributed funds only from service providers by directing USAC to recover from the service provider, the applicant or both, depending upon who was at fault.<sup>43</sup> Here, Petitioners are seeking additional payments rather than challenging recovery of payments improperly made to them so the *Schools and Libraries Fourth Report and Order* is not controlling. Furthermore, if recovery of improperly disbursed payments were at issue here, recovery of payments would be appropriate under existing procedures that permit recovery of E-rate support from all consortium members where the contract procurement violated the Commission's competitive bidding rules.

12. Moreover, to the extent Petitioners seek payments for unpaid invoices related to work they performed for the DISD, their proper recourse is through a civil action against either MSE pursuant to the terms of Letters of Agreement executed by MSE and Petitioners, or the DISD as the beneficiary of the work performed by Petitioners.<sup>44</sup> The contract submitted to USAC for the DISD E-rate project was between MSE and the DISD.<sup>45</sup> Petitioners contracted to perform work pursuant to an agreement they had with MSE, and the Letters of Agreement signed by Petitioners and MSE indicated that MSE, as the lead agent for the MSE Consortium, was responsible for the collection and disbursement of payments for goods and services performed under the E-rate contract at issue.<sup>46</sup> In addition, the Letters of Agreement

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<sup>38</sup> *Tennessee*, 18 FCC Rcd at 13587, para. 18.

<sup>39</sup> *Id.* at 18 FCC Rcd at 13589, para 23; *BellSouth Corporation for clarification of request for Immediate Relief filed by the State of Tennessee, Federal State Joint Board on Universal Service*, 18 FCC Rcd 26588 (2003).

<sup>40</sup> Petition for Reconsideration at 6 (arguing that the Bureau misconstrued the Commission's decision in *Tennessee*).

<sup>41</sup> *Id.* at 9 (arguing that withholding payment and seeking recovery from innocent service providers like Petitioners will violate the rule set forth in the *Schools and Libraries Fourth Report and Order*); see *Federal State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., School and Libraries Universal Service Support Mechanism*, CC Docket No. 96-45, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15255 (2004) (*Schools and Libraries Fourth Report and Order*)).

<sup>42</sup> Petition for Reconsideration at 9.

<sup>43</sup> *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15255-58, paras 10-17.

<sup>44</sup> See Supplement at Exhibits 2-4.

<sup>45</sup> See Supplement at Exhibit 1.

<sup>46</sup> Supplement at Exhibits 2-4, Section II ("In conjunction with any unpaid invoices from [Petitioner] to MSE, MSE shall use best efforts to collect funds from Schools and Libraries Division, Universal Service Administration

stipulated that any dispute between the parties would be resolved through the courts.<sup>47</sup> Given the plain language of the contractual provisions, we find that the proper forum for Petitioners' claim is the courts.<sup>48</sup>

13. Petitioners have also asserted that they should receive payment for the work they completed because USAC has not taken action to recover payments from other consortium members.<sup>49</sup> That assertion is incorrect. The Commission and the Department of Justice have negotiated a civil settlement with Hewlett-Packard (HP) for its part in fraud claims related to the contract between the MSE Consortium and the DISD.<sup>50</sup> As part of the settlement, HP has agreed to pay the government \$16.25 million, most of which will be returned to the E-rate program.<sup>51</sup> In addition, under a settlement agreement negotiated with the Department of Justice, the DISD has paid \$750,000 and withdrawn more than \$150 million in pending requests for E-rate funds.<sup>52</sup>

14. Petitioner's remaining arguments – asserting an unconstitutional “taking” of their property and a violation of the APA, and seeking recovery from USAC under a *quantum meruit* theory – are all also based on their assertion of innocence with respect to the misconduct of MSE and the DISD and on the argument that they are being denied payment for goods and services that have unjustly enriched the DISD.<sup>53</sup> For the reasons discussed above, we find these arguments to be unpersuasive. Petitioners' contractual relationship was with MSE, not with USAC or the Commission. Accordingly, under either of these theories, neither USAC nor the Commission has any contractual or legal obligation to pay Petitioners for their work for the DISD. If Petitioners believe they are entitled to monetary relief, whether through the explicit terms of the contract or through an implied agreement with the DISD, the beneficiary of the work performed, the appropriate recourse is a civil action in court against a party with whom they have a contractual relationship.<sup>54</sup>

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Company and/or DISD which may be owing to MSE so that SME may remit to [Petitioner] their share of the funds due hereunder.”).

<sup>47</sup> Supplement at Exhibits 1-4, Section III (“Any dispute concerning this Agreement must be brought in a court of competent jurisdiction in Dallas, Dallas County, Texas, and the parties hereto consent to such jurisdiction and venue.”).

<sup>48</sup> The Commission has a long-standing policy of refusing to adjudicate claims arising out of private contractual agreements. See, e.g., *Listener's Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd, 18025, 18148 at para. 214 (1998); *Agreements Between Broadcast Licensees and the Public*, 57 FCC 2d 42 (1975); *Metromedia Company*, File Nos. 29700-CL-TC-1-86 *et al.*, Memorandum Opinion and Order, 1 FCC Rcd 1227, 1232, para. 33 (Com. Car. Bur. 1986).

<sup>49</sup> Petition for Reconsideration at 10.

<sup>50</sup> See *HP To Pay \$16.26 Million To Settle DOJ-FCC E-Rate Fraud Investigation*, FCC Press Release, Nov. 10, 2010, [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db1110/DOC-302764A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1110/DOC-302764A1.pdf) (last visited September 9, 2011). In addition, the Commission has negotiated a compliance plan with HP. *Id.*

<sup>51</sup> *Id.* at 1.

<sup>52</sup> See, e.g., <http://www.justice.gov/opa/pr/2009/June/09-civ-632.html> (last visited September 9, 2011).

<sup>53</sup> See Petition for Reconsideration at 11-12. Petitioners cite to one case, *Monogahela Navigation Co. v. United States*, 148 U.S. 312 (1893), for the proposition that they are entitled to an adjudication of “just compensation” by the courts. Petition for Reconsideration at 11.

<sup>54</sup> We note that in their *ex parte* letter, Petitioners incorrectly refer to the government as a recipient of the benefits conferred by the contract. Petitioners' October 29 *ex parte* at 3.

15. Finally, we deny Petitioners' request for a waiver of the Commission's rules.<sup>55</sup> Petitioners have not shown that good cause exists to waive our rules.<sup>56</sup> Indeed, we find that the public interest demands that we enforce violations of our competitive bidding rules to preserve the integrity of the E-rate program and protect it from waste, fraud, and abuse.<sup>57</sup>

#### IV. ORDERING CLAUSES

16. 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 1.104 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.104 and 1.106, that the Petition for Reconsideration and Supplement filed by Lazo Technologies, Inc., Hill Professional Services, and Advanced Technology Solutions South IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>55</sup> Petition for Reconsideration at 14-15.

<sup>56</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

<sup>57</sup> See, e.g., *Ysleta Order*, 18 FCC Rcd at 26409, para. 2 (expressing concern about a number of practices that undermine the integrity of the competitive bidding process and ultimately thwart the goal of effective, efficient, and equitable distribution of universal service support to eligible schools and libraries).