

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

In the Matter of)	
)	
Application for Review of a)	
Decision of the)	
Wireline Competition Bureau by)	
)	
Henrico County School District)	File No. SLD-607894
Richmond, Virginia)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: September 3, 2014

Released: September 4, 2014

By the Commission: Commissioner Pai concurring and issuing a statement.

1. Consistent with Commission precedent,¹ we deny an Application for Review filed by Henrico County School District (Henrico)² seeking review of the Wireline Competition Bureau’s (Bureau) *Henrico Order* and *Henrico Reconsideration Order* (together, *Henrico Orders*).³ The *Henrico Orders* upheld the Universal Service Administrative Company’s (USAC) decision to deny Henrico’s requests for funding under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2008. The Bureau found that Henrico violated the Commission’s competitive bidding rules by failing to use price as the primary factor in its vendor selection process.⁴ The Bureau also determined that there were no special circumstances present in this

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (stating that price must be the primary factor in selecting the winning bid); *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al; Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26429, para. 50 (2003) (*Ysleta Order*) (stating that when evaluating bids, the “cost category” must be given more weight than any other single factor). See also 47 C.F.R. §§ 54.504, 54.511 (2008); 47 C.F.R. §§ 54.503, 54.511 (2011) (requiring applicants to use price as the primary factor in the vendor selection process). In this Order, we describe the requirements of the E-rate program as they currently exist, but because the order involves an application from funding year 2008, and the Commission has reorganized the E-rate rules since then, where the Commission’s codification of the rules in the Code of Federal Regulations has changed, we also cite to the relevant rules as they existed during the relevant funding year.

² See Application for Review of a Decision of the Wireline Competition Bureau by Henrico County School District, CC Docket No. 02-6 (filed Oct. 28, 2013) (Application for Review).

³ See *Request for Review of a Decision of the Universal Service Administrator by Henrico County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 28 FCC Rcd 13015 (Wireline Comp. Bur. 2013) (*Henrico Reconsideration Order*); *Request for Review of a Decision of the Universal Service Administrator by Henrico County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 6277 (Wireline Comp. Bur. 2013) (*Henrico Order*) (together, *Henrico Orders*).

⁴ See *Henrico Orders*. Letter from USAC, Schools and Libraries Division, to Dr. Paul F. Kolmetz, Henrico County School District (dated Feb. 3, 2009) (regarding funding year 2008 FCC Form 471 application number 607894

case justifying a waiver of the Commission's competitive bidding rules, nor did Henrico otherwise demonstrate that such waiver would serve the public interest.⁵

2. Background. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts (subsidized by the universal service fund) for eligible services.⁶ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁷ Applicants must post on USAC's website an FCC Form 470 requesting bids for E-rate eligible services.⁸ The Commission's rules require applicants to carefully consider all submitted bids prior to entering into a contract, and to treat the price of eligible products and services as the primary factor in selecting the winning bid.⁹ Applicants may also consider relevant factors other than the pre-discount prices submitted by providers, such as prior experience, personnel qualifications, management capability, and environmental objectives.¹⁰ When evaluating bids, however, applicants must have a separate "cost category" and that category must be given more weight than any other single factor.¹¹

3. On November 23, 2005, Henrico issued a Request for Proposal (RFP) soliciting bids for eligible telecommunications services and high-speed Internet access.¹² Henrico instructed vendors to submit their initial proposals on January 6, 2006, and their best and final offers on January 25, 2006.¹³ Four vendors submitted bids in response to Henrico's RFP: Sprint Communications (Sprint), Verizon Virginia, Inc. and Verizon Network Integration Corporation (collectively, Verizon), Telcove, and Christopher Communications.¹⁴ Henrico evaluated each bid using the following six criteria: (1) "functional requirements" (representing 25 percent of the total evaluation weighting); (2) "implementation services" (representing 25 percent of the total evaluation weighting); (3) "experience

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(funding request numbers (FRNs) 1700625 and 1700654)); *see also* 47 C.F.R. §§ 54.504, 54.511 (2008); 47 C.F.R. §§ 54.503, 54.511 (2011). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

⁵ *See Henrico Orders.* Generally, the Commission's rules may be waived if good cause is 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. *Northeast Cellular*, 897 F.2d at 1166.

⁶ 47 C.F.R. §§ 54.501-54.502.

⁷ 47 C.F.R. § 54.504 (2008); *see also* 47 C.F.R. § 54.503 (2011).

⁸ *See id.* *See also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (Oct. 2004) (FCC Form 470).

⁹ *See* 47 C.F.R. §§ 54.504, 54.511 (2008); 47 C.F.R. §§ 54.503, 54.511 (2011). *See also Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 481; *Ysleta Order*, 18 FCC Rcd at 26429, para. 50.

¹⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 9029-30, para. 481. *See also* 47 C.F.R. § 54.511 (2008); 47 C.F.R. § 54.511 (2011).

¹¹ *See Ysleta Order*, 18 FCC Rcd at 26429, para. 50. For example, if an applicant assigns 10 points to reputation and 10 points to past experience, the applicant would be required to assign at least 11 points to price. *Id.* at n.138.

¹² *See* Request for Proposal (RFP # 05-7788-11SW), High Speed Internet Access, Henrico County Public Schools (issued Nov. 23, 2005) (Henrico RFP).

¹³ *See* Henrico RFP at 6.

¹⁴ *See* Request for Review.

and qualifications of firm” (representing 15 percent of the total evaluation weighting); (4) “experience and qualifications of proposed staff” (representing 10 percent of the total evaluation weighting); (5) “price” (representing 20 percent of the total evaluation weighting); and (6) “quality of proposal submission/oral presentations” (representing 5 percent of the total evaluation weighting).¹⁵ Henrico then selected Verizon to provide services for the underlying funding request numbers (FRNs) 1700625 and 1700654 and, on February 10, 2006, executed a three-year contract with two one-year extensions.¹⁶ USAC ultimately denied these funding requests after finding that Henrico failed to consider price as the primary factor in its vendor selection process.¹⁷

4. In its initial appeal to the Commission, Henrico conceded that it made an error when assigning the weight to price, but argued that its vendor selection committee placed a prime emphasis on price when evaluating each of the four proposals.¹⁸ Henrico maintained that if it had re-scored the responses using a weight of 30 percent for price and a weight of 20 percent for the functional requirements and implementation services criteria, then Verizon still would have been selected to provide the services at issue.¹⁹ In the *Henrico Order*, the Bureau agreed with USAC’s determination that Henrico failed to comply with the Commission’s competitive bidding requirements for FRNs 1700625 and 1077654, because it did not assign the greatest weight to price in selecting Verizon as its vendor.²⁰ The Bureau also rejected Henrico’s argument that it would have selected Verizon if it had assigned price a weight of 30 percent, which would have been the highest weight assigned to any factor.²¹ The Bureau explained that Henrico’s ability to find a way to re-engineer the process to reach its desired result does not demonstrate compliance with the Commission’s competitive bidding rules at the time of its vendor selection process.²² Additionally, the Bureau determined that the underlying record did not reveal any special circumstances that would justify a waiver of the Commission’s competitive bidding requirements.²³

5. Henrico then filed a Petition for Reconsideration raising new arguments not previously presented in its initial appeal.²⁴ Specifically, Henrico argued that a waiver of E-rate program rules is warranted consistent with the Bureau’s 2011 *Allendale Order*, which waived the Commission’s rules for applicants that failed to use price as the primary factor in their vendor evaluation processes, but selected

¹⁵ *Id.*

¹⁶ *Id.*; Henrico School District Response to the USAC Selective Review Information Request, FCC Form 471 Application Number 607894, at 1. Henrico selected Verizon Virginia, Inc. to provide the underlying services for FRN 1700625 and Verizon Network Integration Corporation to provide the services for FRN 1700654. *See* FCC Form 471, Henrico County School District (filed Feb. 4, 2008).

¹⁷ *See* Letter from USAC, Schools and Libraries Division, to Dr. Paul F. Kolmetz, Henrico County School District (dated Feb. 3, 2009) (regarding funding year 2008 FCC Form 471 application number 607894 (FRNs 1700625 and 1700654)); *see also* 47 C.F.R. §§ 54.504, 54.511 (2008); 47 C.F.R. §§ 54.503, 54.511 (2011).

¹⁸ *See* Request for Review at 2

¹⁹ *See id.*

²⁰ *See Henrico Order*, 28 FCC Rcd at 6278-79, para. 4; 47 C.F.R. §§ 54.504, 54.511 (2008); *see also* 47 C.F.R. §§ 54.503, 54.511 (2011).

²¹ *See Henrico Order*, 28 FCC Rcd at 6278-79, para. 4.

²² *Id.*

²³ *See id.* (stating that the winning vendor’s proposal was higher than competing bids); 47 C.F.R. §§ 54.504, 54.511 (2008); *see also* 47 C.F.R. §§ 54.503, 54.511 (2011).

²⁴ Letter from Peter Taylor, Henrico County School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 3, 2013) (Petition for Reconsideration (Petition)) (regarding funding year 2008 FCC Form 471 application number 607894 (FRNs 1700625 and 1077654)).

the lowest responsive bid.²⁵ Henrico argued that if it had known that the Commission would allow applicants to ignore non-responsive bids, then it would have emphasized on its vendor evaluation sheets that the lowest bid, submitted by Sprint, was not responsive and should have been excluded from consideration.²⁶ Henrico asserted that its selection of the Verizon proposal would then have been justified under the *Allendale Order* because it was the lowest responsive bid.²⁷

6. On reconsideration, the Bureau rejected Henrico's Petition on the basis that it raised new arguments not previously raised on appeal, but also denied Henrico's Petition on the merits. The Bureau observed that Henrico could have structured its vendor evaluation process in a manner that disqualified or excluded non-responsive bids, even before the issuance of the *Allendale Order*.²⁸ Because Henrico did not exclude any bids from consideration, despite having acknowledged in its Petition that it is the prerogative of the contracting entity to do so, and because the record did not support a determination that the Sprint Communications bid was unresponsive, the Bureau concluded that Henrico was simply attempting to offer yet another way to re-engineer its competitive bidding process after the conclusion of that process to reach its desired result.²⁹ The Bureau therefore determined that Henrico did not provide special circumstances justifying a waiver of the Commission's rules and did not otherwise demonstrate that such waiver would serve the public interest.³⁰ Henrico then filed the instant Application for Review with the Commission.³¹

7. Henrico's Application for Review. Henrico presents no new arguments or facts in support of its Application for Review. Rather, Henrico reiterates its previous argument that a waiver of E-rate program rules is warranted because, consistent with the Bureau's 2011 *Allendale Order*, Henrico selected the lowest-price responsive bid.³² In support of this argument, Henrico maintains that Sprint's bid was the lowest bid it received and that it would have disqualified the bid as being non-responsive had it known it could do so.³³ According to Henrico, because its appeal pre-dates the *Allendale Order*, it had no way to know that it could have disqualified the Sprint bid.³⁴ Henrico also takes issue with the

²⁵ See Petition for Reconsideration at 1-2; *Request for Review of Decisions of the Universal Service Administrator by Allendale County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109 (Wireline Comp. Bur. 2011) (*Allendale Order*) (finding that a waiver of the Commission's competitive bidding rules was in the public interest where the petitioners selected the least expensive responsive service offering). In its Petition, Henrico argues that the *Allendale Order* was released two years after Henrico submitted its initial appeal and established new precedent regarding waivers for failure to use price as the primary consideration. See Petition for Reconsideration at 3.

²⁶ See Petition for Reconsideration at 3. A bid that fails to meet the requirements set forth in an applicant's FCC Form 470 or Request for Proposal can be deemed non-responsive by the applicant. An applicant for E-rate support need not include non-responsive bids in its bid evaluation for E-rate supported services. See, e.g., *Allendale Order*, 26 FCC Rcd at 6115-16, para. 12.

²⁷ See Petition for Reconsideration at 3.

²⁸ See *Henrico Reconsideration Order*, 28 FCC Rcd at 13017-18, para. 5.

²⁹ See *id.*

³⁰ *Id.*

³¹ See Application for Review.

³² *Id.*

³³ *Id.* at 4-6.

³⁴ See Application for Review at 4-5; Petition for Reconsideration at 1-2. See also *Allendale Order*, 26 FCC Rcd 6109.

Bureau's rejection of its attempt to re-score its bids using price as the primary factor in a way that results in Verizon being selected as the vendor.³⁵

8. We find Henrico's arguments unpersuasive and affirm the Bureau's denial.³⁶ As an initial matter, we find that contrary to Henrico's assertion, even if the Sprint bid were disqualified as being non-responsive, the Verizon offer that Henrico selected was not the lowest-priced bid.³⁷ The record shows that Henrico selected Verizon's bid for OC3 155Mbps Internet service for \$18,944 per month,³⁸ but that Telcove's bid for OC3 200 Mbps Internet service was substantially lower.³⁹ As indicated above, Henrico solicited a high speed Internet connection of at least 150 to 155 megabits and instructed vendors to submit their initial proposals on January 6, 2006, and their best and final offers on January 25, 2006.⁴⁰ TelCove offered to provide OC3 200 Mbps Internet service for \$17,217 in its initial proposal and for \$12,267 in its best and final offer.⁴¹ Thus, Telcove's initial and final bids were lower than Verizon's. Because TelCove's final bid was lower than Verizon's, even if the Sprint bid were disqualified, there is no basis for us to find that a waiver is appropriate pursuant to the *Allendale Order*.

9. Additionally, we affirm the Bureau's rejection of Henrico's attempts to adjust its bid evaluation after the fact to reach the same result as it reached without using price as the primary factor in its bid evaluation. As the Bureau stated in the *Henrico Order*, applicants may not adjust the scoring values of their evaluation criteria after receiving a funding denial to validate the outcome of their vendor selection process.⁴²

10. Finally, we reject Henrico's assertion that there was no framework in place for addressing non-responsive bids prior to the release of the *Allendale Order*.⁴³ That order was applying existing law, not adopting new rules, and, indeed, USAC provided guidance to applicants in 2004 regarding bid disqualification.⁴⁴ Given these facts and circumstances, we agree with the Bureau that Henrico failed to

³⁵ See Application for Review at 6.

³⁶ See *Henrico Reconsideration Order*, 28 FCC Rcd 13015.

³⁷ See Application for Review at 4.

³⁸ See Letter from Pamela Goggins, Verizon, to Paul Proto, Department of General Services, Henrico County Public Schools, Initial Response (dated Jan. 6, 2006); Letter from Pamela Goggins, Verizon, to Henrico County Public Schools, Best and Final Response (dated Jan. 25, 2006) (collectively, Verizon Offers) (proposing to provide OC3 155 Mbps Internet services for \$18,944).

³⁹ See Letter from Mary Ellen Kelley, TelCove, to Sara Walters, Department of General Services, Henrico County Public Schools, Initial Response (dated Jan. 6, 2006) (Telcove Initial Offer) (proposing to provide OC3 200 Mbps Internet service for \$17,217 and OC3 300 Mbps Internet service for \$22,537); Letter from Mary Ellen Kelley, TelCove, to Sara Walters, Department of General Services, Henrico County Public Schools, TelCove Best and Final Offer (dated Jan. 25, 2006) (TelCove Best and Final Offer) (proposing to provide OC3 200 Mbps Internet service for \$12,267 and OC3 300 Mbps Internet service for \$16,187) (collectively, TelCove Offers). Henrico compares Verizon's best and final offer of \$18,944 for OC3 155 Mbps service to TelCove's initial offer of \$22,537 for *upgraded* OC3 300 Mbps service, and based on that comparison, claims that Verizon offered the lowest price. See Petition for Reconsideration at 3. However, TelCove's best and final offer for this *upgraded* service was \$16,187, which was still lower than Verizon's best offer of \$18,944 for OC3 155 Mbps Internet service. See TelCove Best and Final Offer.

⁴⁰ See *supra* para. 3; Henrico IFP at 6.

⁴¹ See *supra* note 39.

⁴² See *Henrico Order*, 28 FCC Rcd at 6278-79, para. 4.

⁴³ See Application for Review at 4.

⁴⁴ See *Allendale Order*, 26 FCC Rcd 6109; USAC, Schools and Libraries, Fall Applicant Training, Training Materials – Competitive Bidding (2004), available at <http://www.usac.org/about/tools/TrainingArchive/SeriesDetails.aspx?ID=5> (stating that applicants must be prepared

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comply with the Commission's rules to assign the highest weight to price when evaluating bids and that there is no justification for a waiver of the Commission's rules under the precedent of the *Allendale Order*.⁴⁵ As the Commission has previously indicated, we are deeply concerned about practices that undermine the framework of the competitive bidding process.⁴⁶ Thus, when an applicant constructs a bid evaluation process inconsistent with the Commission's competitive bidding requirements, the applicant suppresses fair and open competitive bidding and ultimately damages the integrity of the program.⁴⁷ As the Bureau explained in the *Henrico Orders*, the fact that Henrico can now find ways to re-evaluate the Sprint, Verizon, TelCove, and Christopher Communications bids after the conclusion of its vendor selection process to reach its desired result does not demonstrate compliance with the Commission's competitive bidding rules at the time of its vendor selection process.⁴⁸ We also see no other reason to waive the Commission's competitive bidding requirements under the facts presented by Henrico.

11. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the Application for Review filed by Henrico County School District, Richmond, Virginia, on October 28, 2013, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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to explain if or how they disqualified bids). Henrico acknowledged the existence of these procedures in its response to an E-rate Selective Review Information Request in 2008, well before the release of the *Allendale Order*. See Email from Paul F. Kolmetz, Henrico County School District, to Kenneth A. Solomon, USAC, Schools and Libraries Division, Case SR-2007-BEN#126514 (dated Dec. 12, 2008) ("E-rate procedures allow for the disqualification of bids, prior to the rating of vendor responses. While Henrico County also disqualifies bids initially in the procurement process, Henrico County makes every effort to keep vendors involved in the process. Bids are excluded only for egregious mistakes like failing to acknowledge addendums. In short, Henrico County procurement procedures liberally allow vendor responses to remain in consideration for selection rather than summarily discarding bids up front in the procurement process.").

⁴⁵ See 47 C.F.R. §§ 54.504, 54.511 (2008); see also 47 C.F.R. §§ 54.503, 54.511 (2011).

⁴⁶ See *Universal Service First Report and Order*, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Federal-State Joint Board on Universal Service; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates).

⁴⁷ See, e.g., *Request for Review of the Decision 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 (Wireline Comp. Bur. 2008).

⁴⁸ See *Henrico Orders*.

**CONCURRING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Application for Review of a Decision of the Wireline Competition Bureau by Henrico School District, Richmond, Virginia, File No. SLD-607894, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6.*

I agree with my colleagues that Henrico School District's application for review must be denied because Henrico did not treat price as the primary factor when evaluating bids from four vendors for high-speed Internet access. Specifically, Henrico gave two factors ("functional requirements" and "implementation services") greater weight (25 percent each) than it gave to "price" (20 percent) when evaluating bids. I write separately to explain why the E-Rate program's increasingly byzantine rules and precedents primarily serve the interests of E-Rate consultants and those that can afford to hire them rather than the small, poor, and/or rural schools and libraries that need E-Rate funding most.

The price-is-the-primary-factor rule is case in point.¹ Although the Commission hoped it would ensure that applicants choose the "most cost-effective supplier of access,"² in practice the rule does nothing of the sort. The rule does not require applicants to select the lowest-priced offerings that meet their needs.³ Nor does it, as one might expect, demand that price be the majority factor (*i.e.*, weighted at 51 percent) or even a major factor in selecting a bid. Instead, all the rule requires is that applicants give "price . . . more weight than any other single factor."⁴ So if an applicant considers ten factors, price could be weighted as little as 11 percent.⁵

As a result, the price-is-the-primary-factor rule is nothing more than a paperwork exercise; it elevates form over substance. In Henrico's case, the evaluation matrix mistakenly gave two factors greater weight than price. But each of these factors themselves contained multiple subfactors according to the bidding sheet,⁶ and so, had Henrico been savvy enough to game the system, it could have used effectively the same bidding matrix had it just subdivided these two factors into their constituent parts. Failing to do so technically violated the price-is-the-primary-factor rule, but it did not change the evaluation process one whit.

The penalty for such paperwork mistakes is harsh. Here, Henrico forfeited \$118,210.36 in E-Rate funding even though the savings to E-Rate had Henrico chosen a lower-priced bid would have been only \$41,664.⁷ And that almost-treble penalty comes in a case where treating price as the primary factor would

¹ See 47 C.F.R. §§ 54.504, 54.511 (2008); 47 C.F.R. §§ 54.503, 54.511 (2011); 47 C.F.R. §§ 54.503(c)(2)(ii)(B), 54.511(a) (2014).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (subsequent history omitted).

³ *Id.*

⁴ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26429, para. 50 (2003).

⁵ *Id.* at 26429, n.138 (noting that other factors would have to have weights of 10 or less).

⁶ See Henrico Request for Review, CC Docket No. 02-6, Ex. B (Mar. 12, 2009). The "functional requirements" factor incorporated three separate subfactors: "extent to which the proposal meets the RFP's functional requirements," "compliance with the RFP's technical requirements," and "extent of modifications required to meet requirements." The "implementation services" factor incorporated five separate subfactors.

⁷ Had Henrico chosen the second-best bid (from TelCove), its eligible E-Rate expenses would have been \$12,267 per month, resulting in E-Rate funding of \$76,546.08 for the year. See *Order* at note 39.

have made no difference—had price been the primary factor (decreasing the weights of all other factors proportionately), Henrico would have selected the same vendor that it did.

I admire Henrico’s tenacity in slogging through the six-year administrative process to get to this point. But nothing in E-Rate’s rules, either as they were written back in 2008 or as they stand now, can save Henrico’s funding request from this largely capricious result. Indeed, we had an opportunity to fix this very problem this summer, but the Commission decided to take a pass on real reform.⁸ I can only hope that the Commission will at some point recognize that specialized federal procurement rules—like the price-is-the-primary-factor rule—only hurt the students and library patrons that E-Rate is meant to serve.

⁸ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99, at 170–71 (rel. July 23, 2014) (Dissenting Statement of Commissioner Ajit Pai) (noting the “myriad . . . ‘rules’ [including the price-is-the-primary-factor rule] that have crept into E-Rate’s specialized procurement process” and the resulting hardship for schools and libraries).