



Federal Communications Commission
Washington, D.C. 20554

May 1, 2018

DA 18-444

Ms. Radha Sekar
Chief Executive Officer
Universal Service Administrative Company
700 12th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Sekar:

By this letter, as part of our ongoing oversight of the Universal Service Administrative Company (USAC), we provide guidance to USAC regarding its application of the Federal Communications Commission's E-rate competitive bidding rules for Category One services for Funding Year (FY) 2018.¹ Specifically, we explain how USAC should treat E-rate applications for which the applicants completed their FCC Form 470 in a manner that was reflective of their service needs, but may have been inconsistent with USAC's guidance on which services to select from the FCC Form 470 drop-down menu within the E-rate Productivity Center (EPC) online portal.

As you know, USAC made the FCC Form 470 for FY 2018 available in EPC beginning June 19, 2017. On August 22, 2017, USAC informed applicants in a special edition news brief that it would soon be simplifying the FCC Form 470 drop-down menu within EPC in response to feedback from program participants indicating confusion about the existing FCC Form 470 drop-down menu options that should be used to seek competitive bids for eligible services, particularly fiber services.² USAC implemented the streamlined drop-down menu options on August 26, 2017, seeking to assist applicants in determining how to request bids for particular eligible services and to streamline search efforts for service providers.³

¹ See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company at IV.A.6 (May 2, 2016).

² See Schools and Libraries Special Edition News Brief, Simplified Drop-down Options for Eligible Services on FY2018 FCC Form 470 (dated Aug. 22, 2017), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=786> (August 22 News Brief).

³ See Schools and Libraries News Brief, New Drop-Down Options in EPC for Completing the FCC Form 470 (dated Aug. 25, 2017), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=788>.

USAC also provided guidance on how to use the streamlined drop-down menu options.⁴ For example, USAC explained that the “Internet Access and Transport Bundled” and “Transport Only – No ISP Service” options should no longer be used to request bids for fiber services.⁵

In recent *ex parte* letters filed with the Commission, stakeholders contend that USAC’s streamlined drop-down menu created confusion for many FY 2018 applicants about which FCC Form 470 drop-down menu options to choose for purposes of identifying the services for which they were requesting bids.⁶ Under the Commission’s E-rate competitive bidding rules, applicants cannot submit funding requests for services not included on the applicants’ FCC Form 470.⁷ Stakeholders have therefore expressed concerns that FY 2018 applications for E-rate support may be denied for applicants that selected an FCC Form 470 drop-down menu option that did not match, consistent with USAC’s streamlined drop-down menu guidance, the services selected on their FCC Form 471. For example, some applicants worry that their applications may be denied if they chose the “Internet Access and Transport Bundled” option on the FCC Form 470 and subsequently selected a fiber service on their FCC Form 471.⁸ While USAC’s efforts in August 2017 were intended to simplify the application and competitive bidding process for stakeholders, it now appears that a significant number of applicants were unclear about how to navigate the FCC Form 470 drop-down menu consistent with USAC’s guidance.

Guidance to USAC on FY 2018. Given the apparent confusion of a significant number of applicants and service providers regarding USAC’s streamlined drop-down menu, the concerns raised by stakeholders about the treatment of FY 2018 applications, and the potential adverse impacts to applicants who were acting in good faith, we are providing guidance to USAC on how it should apply the Commission’s competitive bidding rules to FY 2018 applications. The changes made by USAC to the “Internet Access and Transport Bundled” and “Transport Only – No ISP Service” drop-down menu options—*i.e.*, that those options should no longer be used to request bids for those services if they are provided using a fiber network—were not apparent from the text of those options in the FCC Form 470 drop-down menu. Therefore, we direct USAC not to deny an FY 2018 application solely because the applicant chose the “Internet Access and Transport Bundled” or “Transport Only – No ISP Service” option on its FCC Form 470 and subsequently selected a fiber service on its FCC Form 471. For those

⁴ See August 22 News Brief.

⁵ See *id.* (“‘Transport Only – No ISP Service’ and ‘Internet Access and Transport Bundled’ will remain options in the EPC drop-down tool, but may only be used to request bids for non-fiber services.”). This information was also included in EPC in helper text accompanying the drop-down menu. *Id.*

⁶ See, e.g., Letter from Winston E. Himsworth, Executive Director, E-rate Central, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, WC Docket No. 13-184, 1 (filed Apr. 11, 2018) (E-rate Central Ex Parte); Letter from John Windhausen, Jr., Executive Director, Schools, Health & Libraries Broadband Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-184, CC Docket No. 02-6, 1-2 (filed Apr. 9, 2018); Letter from Gary Rawson, Chair, State E-rate Coordinators’ Alliance, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-184, CC Docket No. 02-6, 1 (filed Mar. 19, 2018); Letter from Rebecca J. Goldman, Counsel to Ohio Information Technology Centers, Womble Bond Dickinson (US) LLP, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-184, CC Docket No. 02-6, 2 (filed Mar. 16, 2018).

⁷ See 47 CFR § 54.503(b).

applications, USAC should not find a competitive bidding violation so long as (1) the service requested on the FCC Form 470 matches the service selected on the FCC Form 471, regardless of whether it is provided via fiber; and (2) the applicant has otherwise complied with all of the Commission's competitive bidding rules.⁹

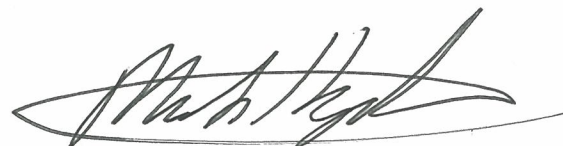
Guidance for FY 2019. Given the importance of the FCC Form 470 drop-down menu options in providing information to service providers searching for bid requests, and to USAC in determining the services for which an applicant seeks bids, we believe that it is imperative to ensure that applicants understand how such drop-down menu options should be used. For FY 2019, we direct USAC to specify within the wording of the drop-down menu option itself those options that include only "non-fiber services" and those that include "fiber services." Additionally, we direct USAC, before July 1, 2018, to provide stakeholders with clear guidance on the FY 2019 FCC Form 470 drop-down menu options and to take whatever measures necessary to ensure that applicants fully understand those options. This guidance is essential to assisting applicants in complying with the Commission's competitive bidding rules in FY 2019 and beyond.

We trust this guidance will be helpful to USAC in processing FY 2018 applications. We would be pleased to answer any questions you might have.

Sincerely,



Kris Anne Monteith
Chief
Wireline Competition Bureau



Mark Stephens
Director
Office of Managing Director

⁸ See, e.g., E-rate Central Ex Parte at 1 ("Relief is needed as a part of the FY 2018 application review process to avoid penalizing applicants who, in good faith, tried to bid and apply for Internet access and transport services").

⁹ See 47 CFR § 54.503.