



Via Electronic Mail
October 16, 2019

Ms. Marie Ortiz Sánchez
Puerto Rico Department of Education
P.O. Box 190759
San Juan, PR 00919-0759

Re: Request for Information regarding Puerto Rico Department of Education's Participation in the E-rate Program

Dear Ms. Ortiz Sánchez:

The Universal Service Administrative Company (USAC), the administrator of the federal universal service support mechanism for schools and libraries (known as the E-rate program or the Schools and Libraries program), is responsible for ensuring that E-rate program funding is disbursed in compliance with the Telecommunications Act of 1996¹ and Federal Communications Commission (FCC or Commission) regulations and orders governing the program.² USAC has an obligation to protect the Universal Service Fund and the universal service support mechanisms (collectively, the USF) from waste, fraud, and abuse.³ To carry out this obligation, USAC is vested with authority to request information to “verify discounts, offsets, and support amounts provided by the universal service support programs”⁴ and to request documentation.⁵

On July 9, 2019, Julia Keleher, former Secretary of the Puerto Rico Department of Education (PRDE), was indicted on charges of wire fraud and theft.⁶ Keleher allegedly used her position as Secretary of PRDE to steer contracts between the PRDE and Colón & Ponce, a company owned by Mayra Ponce Mendoza, Executive Director of the Puerto Rico Health Insurance Administration. This indictment is related to a bidding process pursuant to a Request for Proposal, in which Colón & Ponce participated. As such, USAC is conducting a review of the E-rate program funding provided to PRDE.

¹ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), amended the Communications Act of 1934.

² See generally, 47 U.S.C. §254; 47 C.F.R. § 54.500 *et seq.*

³ See 47 C.F.R. § 54.702.

⁴ 47 C.F.R. § 54.707.

⁵ 47 C.F.R. § 54.516(b).

⁶ See *U.S. v. Keleher et al.* Criminal Docket No. 19-431, Indictment (D. P.R. filed July 9, 2019).

E-rate Competitive Bidding Requirements

Applicants participating in the E-rate program must conduct a fair and open competitive bidding process that is free from any conflicts of interest.⁷ Specifically, FCC rules require applicants to seek competitive bids for all services and equipment eligible for E-rate discounts, to “carefully consider all bids submitted,” and select “the most cost-effective service offering” using the price of eligible goods and services as the primary factor.⁸

Evidence that a service provider assisted or participated in the applicant’s process for issuing a FCC Form 470, an RFP, and/or selecting the vendors, creates a conflict of interest that taints the competitive bidding process and constitutes a violation of the Commission’s competitive bidding rules.⁹ The Commission has also found that employees who work for both the service provider and the applicant is a conflict of interest that taints the competitive bidding process.¹⁰ In addition, FCC rules prohibit applicants from favoring a particular service provider during the competitive bidding process, which gives the service provider an unfair advantage.¹¹

USAC's Request for Information and Documentation

From FY 2017 through FY 2019, the PRDE requested \$73.7 million, of which \$27.1 million in E-rate program funding has been approved to date. In light of the indictment of former Secretary Keleher, USAC is seeking additional information to determine whether PRDE complied with FCC rules. Please provide responses to the following questions along with supporting documentation.

⁷ 47 C.F.R. § 54.503(a); *see also Federal-Board on Universal Service, et al.*, CC Docket Nos. 96-45, *et al.* Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, para. 185 (1997) (*Fourth Order on Reconsideration*) (“The competitive bidding process 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.”).

⁸ 47 C.F.R. § 54.511(a).

⁹ *See Request for Review of Decisions of the Universal Service Administrator by Mastermind Internet Services, Inc.*, CC Docket No. 02-6, Order, 16 FCC Rcd 40228, 4032, para. 11 (2000) (finding that “participation of the [service provider] in the bidding process may significantly affect the submission of bids by other prospective bidders, thereby undermining the ability of the applicant to obtain the most cost-effective bid”); *Request for Review of the Decisions of the Universal Service Administrator by SEND Technologies, LLC*, CC Docket No. 02-6, Order, 22 FCC Rcd. 4950, 4952-4953, paras. 6-7 (2007); *Request for Review of the Decisions of the Universal Service Administrator by Caldwell Parish School District*, CC Docket No. 02-6, Order, 23 FCC Rcd. 2784, 2791-2792, paras. 17-18 (2008); *Request for Review of the Decisions of the Universal Service Administrator by Marana Unified Sch. Dist.*, CC Docket No. 02-6, Order, 27 FCC Rcd 1525, 1530-31, paras. 9-13 (2012) (*Marana Order*) (finding that the applicant provided the service provider an unfair advantage thereby failing to conduct a fair and open competitive bidding process).

¹⁰ *See Requests for Review of the Decisions of the Universal Service Administrator by Greeley Public School District*, CC Docket No. 02-6, Order, 28 FCC Rcd 6898, 6900, para. 4 (2013) (*Greeley Order*) (finding a conflict of interest when the employee of the service provider also served as the technology director for the school and participated in the bidding process).

¹¹ *See* 47 C.F.R. § 54.503(a); *Marana Order*, 27 FCC Rcd 1525, 1530-31, paras. 9-13 (providing a service provider with an unfair advantage violates the fair and open competitive bidding process rule).

1. Please provide documentation of any reviews that PRDE have completed to determine that the actions that led to Ms. Keleher's indictment did not affect any E-rate funding.
2. Please explain any internal controls changes PRDE have made in response to these events.
3. Please describe Julia Keleher's involvement in PRDE's E-rate application process, including the competitive bidding and bid evaluation process. This explanation should cover all of the funding requests that were in place during her tenure.
4. Please provide any documentation and correspondence between Julia Keleher and any E-rate-participating service providers.
5. Please provide copies of PRDE's procurement policies and procedures that were in place during Julia Keleher's tenure as Secretary of Education.
6. For the FRNs listed in the table below, we seek additional documentation related to the competitive bidding process. This additional documentation supplement competitive bidding review that USAC has already conducted on other PRDE funding requests for the same funding years.

BEN: 157779 - PUERTO RICO DEPARTMENT OF EDUCATION, PR

Fund Year	471 App #	FRN	Service Type	Discount Rate	FRN Commitment Status	Requested Dollars	Service Provider Name
2017	171047725	1799108906	Managed Internal Broadband Services	85	Funded	\$8,020,189.21	Puerto Rico Telephone Company Inc
2017	171049948	1799113568	Managed Internal Broadband Services	85	Funded	\$3,150,130.22	Puerto Rico Telephone Company Inc
2018	181038811	1899075282	Basic Maintenance of Internal Connections	85	Pending	\$2,454,399.62	Truenorth Corporation
2018	181040915	1899079627	Managed Internal Broadband Services	85	Pending	\$5,810,314.43	Puerto Rico Telephone Company Inc
2019	191031803	1999055007	Basic Maintenance of Internal Connections	85	Pending	\$2,653,687.65	Truenorth Corporation
2019	191032667	1999058036	Data Transmission and/or Internet Access	90	Pending	\$10,364,724.00	Puerto Rico Telephone Company Inc
2019	191032667	1999058438	Data Transmission and/or Internet Access	90	Pending	\$516,672.00	Puerto Rico Telephone Company Inc

Fund Year	471 App #	FRN	Service Type	Discount Rate	FRN Commitment Status	Requested Dollars	Service Provider Name
2019	191032949	1999058981	Managed Internal Broadband Services	85	Pending	\$4,947,739.30	Puerto Rico Telephone Company Inc

- a. Contracts and/or other agreements: Signed and dated copies of any and all agreements related to each of the FCC Form 471 funding request(s), including any and all contracts, agreements, Statements of Work, etc.
- b. Requests for Proposal (RFPs): Copies of any and all requests for proposals (RFPs), invitations to bid, requests for bids, or other documentation of bid requests for services and/or products requested, or other solicitations in any way associated with the applicant's funding request(s) and/or the selection of the service provider(s) that appear(s) on the applicant's funding request(s). Be sure to include any and all amendments made to the original RFP. All RFPs should indicate when they were first made available to service providers, *i.e.*, release and posting date as well as the due date for which bids must be submitted. If you issued any addendums to the RFP, please provide a copy of that addendum.
- c. Bid Responses: Indicate the number of bids/proposals received for all funding requests and provide complete copies of any and all proposals, bid responses, etc., received in response to the FCC Form 470, and/or any RFP, or other solicitation in any way associated with the applicant's funding request and/or with the selection of the service provider that appears on the applicant's funding requests. This information should be provided for all funding requests including tariff, month-to-month and contracted services.
- d. Vendor Selection Process: Please provide your bid evaluation matrix that was used to select your vendor. Include all bids that you received and any other bid documentation such as attendance sheets, correspondences to and from the bidding vendor and a description of your bid evaluation process.
- e. Correspondence: Provide a copy of all correspondence between PR DOE and PR DOE's service providers regarding the competitive bidding process and the application process for each of the FRNs.

Conclusion

It is USAC's goal for PRDE to continue to realize the benefits of the E-rate program. However, in light of USAC's concerns explained above, to ensure that funding is committed and disbursed in compliance with applicable law, and to protect the USF from waste, fraud and abuse, USAC must investigate these matters and review PRDE's E-rate participation during Julia Keleher's tenure as Secretary of Education. Please also be advised that responses you provide in

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addressing the matters identified in this letter may result in follow-up information requests by USAC.

Please respond to this letter with the requested documentation within 30 days.

Sincerely,

/s/

Catriona Ayer
Vice President, Schools and Libraries Division