



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

November 5, 2020

Docket No. 20-0100

Edward Campos, Director
Small & Minority Business Resources Department
City of Austin
811 Barton Springs Road, Suite 805
Austin, TX 78704

Dear Mr. Campos:

This is in response to the appeal of the denial by the City of Austin Small & Minority Resources Department (SMBR) of the application for DBE certification of S & S Cable Communications, Inc. (SSCC). SMBR denied the application both on the basis of ownership and control.

With respect to ownership, SMBR's decision points out that SSCC was founded by Brian Schneider, the non-disadvantaged husband of Pixie Marie Schneider, the current 51 percent owner of the firm. Ms. Schneider gained her ownership share via a November 2019 "Separate Property Agreement," which transferred 51 percent of the firm's stock from Mr. Schneider to her. No funds were exchanged as part of this transaction. From this, SMBR concluded that Ms. Schneider had not made a real and substantial capital contribution to account for her ownership interest in the firm.¹

However, the appeal cites and documents a 2017 contribution of over [REDACTED] that Ms. Schneider made to the firm from her independent funds as well as a 2017 loan guarantee she made personally to a local bank for an amount exceeding [REDACTED] million. This information was not part of the record at the time SMBR made its decision. According to the appeal, since the application form asked only for two years of financial information (i.e., going back to 2018), the information about the 2017 actions was not included in the company's initial submission.

With respect to control, SMBR's decision focuses on the emphasis in Ms. Schneider's resume on administrative tasks and statements in the report of the virtual interview in which she is said to have acknowledged performing principally administrative duties. She does not, SMBR adds, have technical expertise in the SSCC's core business.

In the appeal, Ms. Schneider presented a detailed narrative concerning her role in controlling the company and Mr. Schneider's relatively less central involvement (including his lengthy absences to tend to his family's farm). Again, this information was not part of the record at the time

¹ See 49 CFR 26.69(c)(1).

SMBR made its decision. The appeal asserts that the virtual interview did not provide an opportunity for a full and clear explanation of Ms. Schneider's role in the firm.

We also note that neither the decision nor the appeal mentioned that the pay stubs in the record show Ms. Schneider receiving a considerably higher salary than her husband (█████ vs. █████ per month), which arguably supports her assertion of having the more significant role in the company.

The information made part of the record in the appeal is relevant to making a fair decision about SSCC's eligibility, and we find that the record on which SMBR based its decision was incomplete. For this reason, under section 26.89(f)(4) of the regulation, we remand the case to SMBR for further consideration. See also section 26.89(e), regarding supplementation.

We direct SMBR to issue a new eligibility determination by close of business December 4, 2020, one that reflects careful consideration of the information presented on appeal and any additional information SSCC wishes to provide. We instruct SMBR to give SSCC the opportunity to further supplement the record, including to address additional questions or concerns SMBR may have. Remote but live discussions summarized in email, with attachments as necessary should suffice. We urge the parties to be candid and forthcoming and to reach a result that is satisfactory to both.

With thanks for both parties' efforts and cooperation, we urge them to be forthcoming and candid in this final phase. We believe that they can reach a mutually satisfactory result. We ask that SMBR please send us a copy of its timely decision.

This decision is administratively final and not subject to petitions for review.

Sincerely,

Samuel F. Brooks
Team Lead
Disadvantaged Business Enterprise Division

cc: Pixie Marie Schneider