

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the Decision of the)
Universal Service Administrator by)
Jennings County Schools) File Nos. SLD-483504, 484125, 484535
North Vernon, IN)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: July 19, 2006

Released: July 19, 2006

By the Chief, Wireline Competition Bureau:

1. In this Order, we grant the Request for Review filed by Jennings County Schools (Jennings County) seeking review of a decision by the Universal Service Administrative Company (USAC) denying Jennings County discounted services under the schools and libraries universal service support mechanism (E-rate program).1 USAC denied Jennings County’s Funding Year 2005 funding requests after Jennings County failed to respond to USAC’s selective review data request by the USAC-designated deadline.2 For the reasons discussed below, we grant the request for review and remand this case to USAC for further consideration consistent with this Order. We also direct USAC to complete its review of this application and issue an award or denial based on a complete review and analysis no later than 60 days from release of this Order.

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.3 To ensure that applicants are able to use the discounted services effectively, and thereby minimize waste, Commission rules require applicants to certify that they will have the necessary resources to finance both the non-discounted portion of the price of eligible services and whatever their technology plans indicate they need, in terms of equipment, training, and other resources, to be able to effectively use the discounted services.4 That is, applicants must ascertain the costs of the products and services they need to support effective usage and then certify that they have identified funding sources that will enable them to

1 Letter from Michael Bushong, Jennings County Schools, to Federal Communications Commission, filed March 23, 2006 (Request for Review). 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 may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gregg Sindors, Jennings County Schools, dated Jan. 20, 2006 (USAC Decision on Appeal).

3 47 C.F.R. §§ 54.501-503.

4 See 47 C.F.R. § 54.508(a)(3), (4).

purchase those products and services, as well as the non-discounted portion of the price of eligible services.⁵ Support for eligible services is conditional upon the applicant securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to effectively use the services purchased.⁶

3. On February 18, 2005, Jennings County filed three applications seeking 69 percent E-rate discounts on approximately \$50,000 in services.⁷ On July 12, 2005, USAC sent Jennings County a request for data as part of a “selective review,” requesting a response by July 26, 2005.⁸ On July 16, 2005, Jennings County acknowledged receipt of the selective review materials.⁹ On July 27, 2005, USAC sent a second request for information to Jennings County.¹⁰ Jennings County requested an extension of time to provide its response to August 12, 2005, which USAC granted.¹¹ When there was no response by the second deadline, USAC denied the funding requests, finding that Jennings County had failed to demonstrate that it would have sufficient resources to effectively use its eligible services.¹² Jennings admits that it did not respond to the selective review funding requests, but states that its funding requests were denied before it had a chance to provide the requested information, which it claims it is willing and able to provide.¹³

4. We grant the appeal of Jennings County. Given that the purpose of the necessary resources rule is to ensure that applicants are willing and able to pay the discounted prices of eligible services and finance other related purchases, and that Jennings County has submitted a budget to the Commission purporting to show that Jennings County meets that standard, we now remand its Funding Year 2005 applications to USAC. We direct USAC to give Jennings County 15 calendar days to submit all of its relevant budgetary materials so that USAC can continue its selective review of Jennings County. We expect Jennings County to provide USAC, in a timely manner, with the information that USAC may request. If USAC finds that the three Jennings County applications at issue here were filed consistent with E-rate program rules, it should grant them.

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Jennings County Schools on March 23, 2006 IS GRANTED and REMANDED to USAC for further consideration consistent with this Order.

⁵ See 47 C.F.R. § 54.504(b)(2)(vi), (c)(1)(iii); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471), item 25; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 577 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, 13 FCC Rcd 24493 (1997), *affirmed in part, reversed in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15830-31, paras. 65-66 (2004).

⁷ See Jennings County’s FCC Form 471 applications 483504, 484125, and 484535.

⁸ See USAC Decision on Appeal at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Letter from Gregg Sindors, Jennings County Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated Nov. 7, 2005 at 1-2.

6. IT IS FURTHER 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 pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL COMPLETE its review of these applications and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from release of this Order.

7. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau