

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER ON RECONSIDERATION

Adopted: August 14, 2008

Released: August 14, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order on reconsideration, we grant a petition for reconsideration (Petition) filed by Inter-Tel, Inc. (Inter-Tel),¹ seeking partial reconsideration of the Wireline Competition Bureau's (Bureau) *Approach Learning Order*.² In that order, the Bureau addressed several appeals of decisions by the Universal Service Administrative Company (USAC) filed by applicant Approach Learning and Assessment Center (Approach Learning) and its service provider, Inter-Tel, relating to alleged violations of the Commission's competitive bidding requirements under the schools and libraries universal service support mechanism, also known as the E-rate program.³ We find that the relief extended in the *Approach Learning Order* applies to any work Inter-Tel had not yet performed under funding request numbers (FRNs) 764333, 764346, 764341, and 764340 as part of Inter-Tel's FCC Form 471, Application Number 297762.⁴ In this regard, the Bureau clarifies that Inter-Tel had only agreed to release some, rather than all, of its claims for payment under these FRNs in a December 2004 civil settlement agreement (Civil Settlement) with the United States.⁵ Accordingly, we grant this Petition and remand the underlying application to USAC for further action consistent with this order and the Civil Settlement. We direct

¹ Inter-Tel, Inc. Petition for Reconsideration, CC Docket No. 02-6 (filed Apr. 23, 2007) (Petition). Inter-Tel, Inc. is the parent company of Inter-Tel Technologies, Inc. and Inter-Tel NetSolutions, Inc., both of which are service providers associated with the funding request numbers at issue in this Petition. See Petition at 1. We use the term "Inter-Tel" to refer to all three entities in this order.

² See *Request for Review of the Decisions of the Universal Service Administrator by Approach Learning and Assessment Center, et al.*, CC Docket No. 96-45, File Nos. SLD 140957, et al., Order, 22 FCC Rcd 5296 (Wireline Comp. Bur. 2007) (*Approach Learning Order*).

³ *Id.*

⁴ *Id.* at 5296, 5307, nn.3, 63. The appeal of USAC's denial of application 297762 was filed with the Commission by Approach Learning.

⁵ *Id.* See Petition at Exhibit 1 (Civil Settlement); *infra.* para. 4.

USAC to complete its review of the application and issue an award or denial based on a complete review and analysis, no later than 90 calendar days from the release date of this order.⁶

II. BACKGROUND

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.⁷ The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support.⁸ In accordance with the Commission's rules, applicants submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.⁹ The applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids for E-rate eligible services.¹⁰ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a Request for Proposal (RFP) available providing detail about the requested services.¹¹ The RFP must be available to all potential bidders for the duration of the bidding process.¹²

3. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹³ The applicant must then submit a completed FCC Form 471 to notify USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.¹⁴ To demonstrate compliance with the competitive bidding requirements, the applicant must, in connection with each funding request, cite an FCC Form 470 in which the applicant sought the same category of service later contracted for and reflected in the applicant's FCC Form 471.¹⁵

⁶ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

⁷ 47 C.F.R. §§ 54.501-54.503.

⁸ 47 C.F.R. §§ 54.504, 54.511(c).

⁹ 47 C.F.R. § 54.504(b).

¹⁰ *Id.*; see also *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9077-80, paras. 572-579 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

¹¹ See, e.g., *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (May 2003) (FCC Form 470).

¹² *Id.*

¹³ 47 C.F.R. § 54.504(b)(4).

¹⁴ 47 C.F.R. § 54.504(c).

¹⁵ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 at 19 (Dec. 2002) (FCC Form 471 Instructions). Generally, there are three categories of service for which an applicant may request services on the FCC Form 470: telecommunications services, Internet access, and internal connections. See Instructions for Completing the Schools and Libraries Universal Service

4. *Inter-Tel Petition.* On December 8, 2004, Inter-Tel entered into the Civil Settlement with the United States (including the Commission and USAC), concerning, among other things, non-competitive bidding practices.¹⁶ Under the terms of the Civil Settlement, Inter-Tel agreed to release USAC from any obligations to pay and any other liability for uncompensated E-rate work performed by Inter-Tel under certain enumerated FRNs.¹⁷ The Civil Settlement also provided that, to the extent that Inter-Tel had performed uncompensated E-rate work under FRNs that were not expressly enumerated in the agreement, Inter-Tel “agrees to release the United States . . . from any obligation to pay and any other liability for work performed under such additional FRNs.”¹⁸

5. On March 23, 2007, the Bureau released the *Approach Learning Order*, in which the Bureau addressed, among other things, several appeals filed by Approach Learning and Inter-Tel relating to alleged violations of the Commission’s competitive bidding requirements.¹⁹ The Bureau found that Approach Learning and Inter-Tel had not violated the Commission’s competitive bidding rules in completing the FCC Form 470, and, therefore, remanded the underlying applications to USAC for further consideration.²⁰ The Bureau noted, however, that the relief granted did not apply to FRNs 764333, 764346, 764341, and 764340, all associated with FCC Form 471, Application Number 297762.²¹ The Bureau stated that Inter-Tel had released its claims for payment under these FRNs in the Civil Settlement, and, as such, the appeals related to those FRNs were moot.²²

6. On April 23, 2007, Intel-Tel filed this petition for reconsideration, arguing that it did not release all of its claims for payment for FRNs 764333, 764346, 764341, and 764340 in the Civil

Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (FCC Form 470 Instructions). In the FCC Form 470, the applicant must seek funding for the same services later requested in the applicant’s FCC Form 471. If it does not, the FCC Form 471 will be rejected for violating the Commission’s competitive bidding requirements. See 47 C.F.R. §§ 54.504(b)-(c); see, e.g., *Request for Review by Aberdeen School District No. 5, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-327601, CC Docket No. 96-45, Order, 19 FCC Rcd 22910 (Tel. Acc. Pol. Div., 2004).

¹⁶ See Civil Settlement.

¹⁷ See Petition at 2; Civil Settlement at 3-4 (listing the following FRNs: 848943, 845456, 845120, 845498, 845419, 845377, 837164, 837118, 842272). The terms of the Civil Settlement applied to Inter-Tel or any related entity using Service Provider Identification Numbers 143004917, 143005138, 143005176, 143005559, 143006568, 143007286, 143007608, 143007625, 143008103, 143008226, 143009584, 143011125, 143011128, 143011939, 143014716, 143018559, 143019315, 143019400, and 143022581. See Civil Settlement at 3.

¹⁸ See Petition at 2; Civil Settlement at 3-4.

¹⁹ See *Approach Learning Order*, 22 FCC Rcd at 5302-03, paras. 16-17.

²⁰ USAC denied funding to Approach Learning after finding that its FCC Forms 470 contained improper service provider contact information. See *id.* at 5301, para. 15. Approach Learning appealed to the Bureau, arguing that the contacts named on the FCC Form 470 were not affiliated with it at any time during the competitive bidding processes. See *id.* at 5302, para. 16. The Bureau concluded that there was sufficient evidence to demonstrate that there was no improper vendor involvement in the competitive bidding processes, and, therefore, granted Approach Learning’s request for review and remanded the applications to USAC. See *id.* at 5303, para. 17.

²¹ *Id.* at 5296, 5307, nn.3, 63.

²² *Id.*

Settlement.²³ Inter-Tel states that in the Civil Settlement it released USAC from its obligation to pay for certain E-rate work that Inter-Tel had already performed.²⁴ Inter-Tel states, however, that it did not release USAC from its obligation to pay for E-rate work “yet to be performed” by Inter-Tel.²⁵ Inter-Tel therefore asks the Bureau to modify its decision in the *Approach Learning Order* to clarify that the terms of the Civil Settlement do not apply to FRNs 764333, 764346, 764341, and 764340 with regard to work “yet to be performed” under those FRNs, which, Inter-Tel asserts, includes any work performed by Inter-Tel after the release date of the *Approach Learning Order*, March 23, 2007.²⁶

III. DISCUSSION

7. After reviewing the record, we find that we should grant the Petition and clarify that the relief extended in the *Approach Learning Order* applies to any work Inter-Tel had not yet performed under FRNs 764333, 764346, 764341, and 764340 as part of Approach Learning’s FCC Form 471, Application Number 297762.²⁷ As discussed above, under the terms of the Civil Settlement, Inter-Tel provided a partial release of the FRNs at issue in the Petition. Inter-Tel agreed to release USAC from any obligations to pay Inter-Tel for work performed under certain enumerated FRNs and other pending FRNs not expressly enumerated in the agreement.²⁸ The terms of the agreement, however, do not preclude Inter-Tel from seeking payment from USAC for work that it had *not yet performed* under FRNs 764333, 764346, 764341, and 764340 and other pending FRNs, as of the effective date of the Civil Settlement, December 8, 2004.²⁹ We therefore find that the *Approach Learning Order* should be modified to the extent that it states that Inter-Tel had agreed to release all of its claims for payment under FRNs 764333, 764346, 764341, and 764340 in the Civil Settlement.³⁰ We thus clarify that Inter-Tel may seek payment from USAC for any work that it performed after December 8, 2004, the effective date of the Civil Settlement, for work associated with FRNs 764333, 764346, 764341, and 764340.³¹ Accordingly, we grant Inter-Tel’s Petition and remand the underlying application, FCC Form 471, Application No. 297762 (FRNs 764333, 764346, 764341, and 764340), to USAC for further processing consistent with the terms of this order and the Civil Settlement.³² In remanding these FRNs to USAC, we note that nothing in the

²³ See Petition at 1.

²⁴ *Id.* at 2.

²⁵ *Id.* at 3 (emphasis added).

²⁶ *Id.* at 2-3.

²⁷ *Approach Learning Order*, 22 FCC Rcd at 5296, 5703, nn.3, 63.

²⁸ See *supra* para. 4.

²⁹ See Civil Settlement.

³⁰ See *Approach Learning Order*, 22 FCC Rcd at 5296, 5703, nn. 3, 63.

³¹ We note that, in the conclusion of its Petition, Inter-Tel seeks clarification of the Bureau’s statement in the *Approach Learning Order* that the terms of the Civil Settlement do not apply to “FRNs 764333,764346,764341, and 764340 with regard to any work yet to be performed by Inter-Tel under those FRNs, i.e., any work Inter-Tel may perform after March 23, 2007.” Petition at 3. March 23, 2007, is the release date of the *Approach Learning Order*. We find, however, that Inter-Tel may seek payment from USAC for work performed following the effective date of the Civil Settlement. See Civil Settlement at 10, para. 19.

³² We estimate that the Petition granted in this order involves an application for approximately \$2,573,311.33 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g.,

Civil Settlement requires favorable action on the FRNs, and we make no finding as to the ultimate eligibility of the requested services.³³ We direct USAC to complete its review of the application and issue an award or denial based on a complete review and analysis, no later than 90 calendar days from the release date of this order.³⁴

8. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant this Petition, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent that the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.106, that the Petition for Reconsideration filed by Inter-Tel, Inc. on April 23, 2007, IS GRANTED and the underlying application IS REMANDED to USAC for further consideration in accordance with the terms of this order and the Civil Settlement.

10. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the 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 Universal Service Administrative Company SHALL COMPLETE its review of the remanded application and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (August 1, 2008). Thus, we determine that the action we take today should have minimal impact on the universal service fund as a whole.

³³ Nothing in this order is intended to authorize or require payment of any claim that has previously been released by a service provider or applicant, including in a civil settlement or criminal plea agreement with the United States.

³⁴ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

11. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.106, this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief
Wireline Competition Bureau