

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Requests for Review )
Minnesota River Valley Education District ) File No. SLD-347185
Montevideo, Minnesota )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: October 30, 2006 Released: October 30, 2006

By the Chief, Wireline Competition Bureau:

1. In this Order, we grant the Request for Review filed by the Minnesota River Valley Education District (MRVED), Montevideo, Minnesota, seeking review of the decision by the Universal Service Administrative Company (USAC) denying discounted services for Funding Year 2003 under the schools and libraries universal service mechanism (E-rate program). For the reasons set forth below, we grant the Request for Review and remand the application to USAC for further action consistent with this Order. We 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 the release of this Order.

2. Under the E-rate program, eligible schools, libraries and their consortia may apply for discounts for two basic categories of services: telecommunications services and/or Internet access; and internal connections. In allocating funds during any given funding year, the Commission gives the highest priority to Internet access and telecommunications services, which it designates as Priority One services. Any remaining funds are allocated for internal connections, designated as Priority Two services. In the Tennessee Order, the Commission stated that a service is considered a component of internal connections if it is necessary to transport information within one or more instructional buildings

1 Letter from Pete Ziegler, Minnesota River Valley Education District, to Federal Communications Commission, dated August 16, 2004 (Request for Review). The Minnesota River Valley Education District includes the following schools: Appleton Elementary School, BDRSH Danube Elementary School, BDRSH Renville High School, BDRSH Sacred Heart Elementary, Benson High School, Clarkfield Junior High School, Dawson-Boyd Elementary School, Dawson-Boyd High School, Granite Falls High School, Hagg Elementary School, Lac qui Parle Valley High School, Lakeview Elementary School, Lakeview High School, Madison Marietta Nassau Elementary School, Milan Elementary School, Montevideo Area Learning Center, Montevideo Middle School, Montevideo Senior High School, Northside Elementary School, Ortonville High School, Ortonville-Knoll Elementary School, Ramsey Elementary School, Sanford Elementary School, Yme-Bert Raney Elementary School. 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 (USAC) may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 47 C.F.R. § 54.507(g)(1)(i-iv).

3 Id. See also Schools and Libraries Universal Service Support Mechanism, CC Docket 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15810, para. 5 (2004) (Fifth Report and Order); and Federal-State Joint Board on Universal Service, CC Docket 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915 para. 36 (1998).

4Fifth Report and Order, 19 FCC Rcd at 15810, para. 5.

of a single school campus.”<sup>5</sup> The *Tennessee Order* also stated that it was reasonable to presume that, if facilities are located on an applicant’s premises, then such facilities are necessary to transport information within one or more buildings of the school campus, and are not part of an end-to-end Internet access service.<sup>6</sup> This presumption can be rebutted with evidence that the applicant does not own or have exclusive use of the facilities and thus is truly buying an end-to-end service rather than seeking reimbursement for an internal connection.<sup>7</sup> The Commission stated that some factors to consider when distinguishing between a service and an internal connection include “ownership of the facility used to provide the service, any lease-purchase arrangements regarding such facility, exclusivity arrangements regarding such facility, maintenance agreements regarding such facility and upfront capital costs.”<sup>8</sup>

3. In this case, USAC performed a routine Program Integrity Assurance (PIA) review on MRVED’s request for a fiber lease and, as a result, reclassified MRVED’s services from Priority One to Priority Two services.<sup>9</sup> Because funding for Priority Two services was more limited than for Priority One services during Funding Year 2003, this effectively denied MRVED’s funding request.<sup>10</sup> MRVED filed an appeal with USAC, which USAC denied, stating that USAC had properly reclassified MRVED’s services from Priority One to Priority Two based on MRVED’s answers to the PIA review.<sup>11</sup>

4. After considering the facts surrounding USAC’s denial of MRVED’s application, we grant the Request for Review. We find that, consistent with the *Tennessee Order*, MRVED has rebutted a finding that led USAC to conclude that the requested services were internal connections. One of the central inquiries from the *Tennessee Order* for purposes of distinguishing between internal connections and other services is whether there are exclusivity arrangements regarding the facilities at issue. During PIA review, USAC asked MRVED, “[a]re there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise communications equipment in part for other customers?”<sup>12</sup> In the Request for Review, MRVED explains that it responded “Yes” to this question because it assumed that USAC was questioning the physical security of the equipment on MRVED’s

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<sup>5</sup> *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, 13754, para. 37 (1999) (*Tennessee Order*).

<sup>6</sup> *Id.* at 13754, para. 37.

<sup>7</sup> *Id.* at 13754, para. 39.

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Universal Service Administrative Company, Schools and Libraries Division, to Minnesota River Valley Education District, dated March 16, 2004 (Funding Commitment Decision Letter). USAC website, PIA, <http://www.sl.universalservice.org/reference/6pia.asp>. During PIA review, each application is reviewed to ensure that program support is committed only for eligible products and services as well as eligible uses by eligible entities. See <http://www.universalservice.org/sl/applicants/step08/default.aspx>.

<sup>10</sup> See Funding Commitment Decision Letter at 5. For these particular services, MRVED was eligible for a 65% discount rate. See FCC Form 471, Minnesota River Valley Education District, filed February 6, 2003. During Funding Year 2003, internal connections were set at a 70% level. <http://www.universalservice.org/sl/tools/news-archive/2004/032004.asp#030204>.

<sup>11</sup> Letter of Appeal from Minnesota River Valley Education District to Universal Service Administrative Company, Schools and Libraries Division, dated May 13, 2004; Letter from Schools and Libraries Division, Universal Service Administrative Company to Peter Ziegler, Minnesota River Valley Education Association, dated June 25, 2004 at 1-2 (Administrator’s Decision on Appeal).

<sup>12</sup> Request for Review at 2.

premises, rather than whether MRVED had contractually exclusive use of the equipment.<sup>13</sup> MRVED explains that it simply meant that the doors to the equipment room are locked.<sup>14</sup> Applying the *Tennessee Order*, MRVED's answer led USAC to conclude that the equipment was exclusively used by MRVED to transport information within school buildings, and accordingly, USAC reclassified the service as internal connections.

5. We do not believe MRVED's misinterpretation of the PIA question should result in the denial of funding under these circumstances. MRVED should be allowed an opportunity to clarify how its on-premises equipment is used. MRVED's service provider indicates that it uses the equipment "located on MRVED school premises to switch and transport video and Internet traffic for MRVED and other customers."<sup>15</sup> This assertion would be consistent with the *Tennessee Order's* finding that facilities located on an applicant's premises may be part of an end-to-end Internet access service, rather than an internal connection, if such facilities are used by other entities in addition to the applicant.<sup>16</sup>

6. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of MRVED's application and issue an award or denial based on a complete review and analysis no later than 60 calendar days from release of this Order. In remanding this application, we make no finding as to the ultimate eligibility of the requested service. We emphasize that the limited nature of this decision is to allow the applicant to correct a ministerial error. We continue to require E-rate applicants to submit complete and accurate information to USAC as part of the application review process.

7. ACCORDINGLY, IT IS 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, 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 Minnesota River Valley Education District, Montevideo, Minnesota, IS GRANTED, and the application IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

8. 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 the application 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.

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

#### FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Request for Review at Attachment O (Letter from Darrell J. Westrum, Direct Communications to Federal Communications Commission, dated August 10, 2004).

<sup>16</sup> See *Tennessee Order*, 14 FCC Rcd at 13754, para. 39