

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Grand Rapids Public Schools
Grand Rapids, Michigan
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-524297
CC Docket No. 02-6

ORDER

Adopted: October 30, 2008

Released: October 30, 2008

By the Acting Chief Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request by Grand Rapids Public Schools, Grand Rapids, Michigan, (Grand Rapids) seeking review of a decision by the Universal Service Administrative Company (USAC) denying funding for discounted services under the schools and libraries universal service mechanism (also known as the E-rate program). USAC denied funding on the ground that Grand Rapids' Funding Year 2006 application violated the Commission's competitive bidding requirements. We find that Grand Rapids should be allowed to correct the error on its FCC Form 471 that served as the basis for USAC's denial of funding. We therefore grant Grand Rapids' request for review and remand the underlying application to USAC for further action consistent with this order. To the extent necessary, we waive section 54.504(c) of the Commission's rules to allow Grand Rapids to amend its original FCC Form 471 application submitted to USAC. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the underlying application and issue an award or denial based upon a complete review and analysis no later than 60 calendar days from the release date of this order.

1 Letter from Ronald Basso, Basso and Basso Legal Services, LLC, on behalf of Grand Rapids Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (June 8, 2007) (Request for Review). In this order, we use the term "appeals" to generally refer to requests for review of decisions by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 47 C.F.R. § 54.504(c) (providing that applicants shall submit a completed FCC Form 471 application to USAC).

3 In performing a complete review and analysis of each 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.

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.⁴ The Commission's rules provide that an eligible school, library, or consortium must seek competitive bids for all services eligible for support.⁵ In accordance with the Commission's rules, an applicant must file with USAC an FCC Form 470 requesting services.⁶ After the FCC Form 470 is posted to USAC's web site, the applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471.⁷ Section 54.504(c) of the Commission's rules also states that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."⁸ Specifically, the instructions for the FCC Form 471 state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.⁹

3. To ensure that applicants are in compliance with our competitive bidding rules, applicants must file a new FCC Form 470 when the existing contract ends.¹⁰ Specifically, when a contract expires at the end of the original term, the applicant must post a new FCC Form 470 for services provided beyond the contract expiration date.¹¹ An applicant does not need to post a new FCC Form 470 each year when it has a multi-year contract or when exercising a contract's voluntary renewal provision if the applicant indicated that it was seeking a contract with those terms when it originally filed the FCC Form 470.¹²

4. *Request for Review.* Grand Rapids requests review of USAC's decision to deny funding on the ground that Grand Rapids' Funding Year 2006 application violated the Commission's competitive bidding requirements.¹³ Specifically, USAC concluded that Grand Rapids did not provide a sufficient

⁴ 47 C.F.R. §§ 54.502, 54.503.

⁵ 47 C.F.R. §§ 54.504, 54.511(c).

⁶ 47 C.F.R. § 54.504(b); *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

⁷ 47 C.F.R. § 54.504(b)(4); *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

⁸ 47 C.F.R. § 54.504(c); *see also Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002).

⁹ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471 Instructions).

¹⁰ *See Request for Review of New Albany-Floyd County Consolidated School Corporation, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-287615, CC Docket No. 02-6, Order, 20 FCC Rcd 8159, 8160-61, para. 5 (Wireline Comp. Bur. 2005).

¹¹ *Id.*; *see also* USAC website, Contract Guidance, <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx> (retrieved Aug. 11, 2008).

¹² *See* USAC website, Contract Guidance, <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx> (retrieved Aug. 11, 2008).

¹³ *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Rex James Theten, Grand Rapids Public Schools (dated Apr. 10, 2007) (regarding FCC Form 471 # 524297, Funding Request Number 1463942).

explanation for the lapse in time between the posting date of the FCC Form 470 referenced on Grand Rapids' Funding Year 2006 application (*i.e.*, December 6, 2001) and the contract award date (CAD) (*i.e.*, July 10, 2003), during USAC's Program Integrity Assurance (PIA) review process.¹⁴

5. In its request for review, Grand Rapids explains the reason for the delay between the posting date of the FCC Form 470 referenced on Grand Rapids' Funding Year 2006 application and the CAD.¹⁵ First, Grand Rapids contends that it initially referenced the wrong FCC Form 470 on its Funding Year 2006 application.¹⁶ Grand Rapids states that, when asked to provide the correct FCC Form 470 during the PIA review process, it supplied another incorrect FCC Form 470.¹⁷ Grand Rapids now maintains, on appeal, that the correct establishing FCC Form 470 for the services at issue is FCC Form 470 # 930410000393393, posted on December 6, 2001, with an allowable contract date of January 3, 2002.¹⁸ Second, Grand Rapids asserts that AT&T, now Comcast Business Communications, Inc., was the only service provider to submit a bid in response to that posting.¹⁹ Under the bid, services were to commence July 1, 2002, with a contract expiration date of June 30, 2007.²⁰ Grand Rapids states that it accepted AT&T's bid on January 15, 2002, but could not legally enter into a contract until it obtained USAC's approval of funding and approval by its governing school board.²¹ Grand Rapids asserts that it received approvals from USAC and the governing school board on July 1, 2002, and July 15, 2002, respectively.²² According to Grand Rapids, however, it was unable to sign a service agreement with AT&T until March 23, 2003, approximately 16 months after the posting date of its FCC Form 470.²³ Grand Rapids explains that it became necessary to investigate the long-term viability of the network equipment used to provide the services at issue.²⁴ Grand Rapids states that the investigation took several months to complete, which accounts for the lapse in time between the FCC Form 470 posting date and the date the contract was signed.²⁵

¹⁴ *Id.*

¹⁵ *See* Request for Review.

¹⁶ *See id.* at 2; *see also* FCC Form 471, Grand Rapids Public Schools (filed Feb. 15, 2006).

¹⁷ *See* Request for Review at 2.

¹⁸ *Id.*; *see also* FCC Form 470, Grand Rapids Public Schools (posted Dec. 6, 2001) (FCC Form 470 # 930410000393393).

¹⁹ *See* Request for Review at 3. AT&T submitted a bid in response to Grand Rapids' FCC Form 470 # 930410000393393 on January 10, 2002. *Id.*

²⁰ *Id.* at Exhibit F.

²¹ *Id.* at 3.

²² *Id.* at Exhibits I and J.

²³ *Id.* at 3. The service agreement provided a 60-month term and a service start date of June 23, 2003. *Id.*

²⁴ *Id.*

²⁵ *Id.* at 3-4, 6.

III. DISCUSSION

6. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC, we grant Grand Rapids' request for review.²⁶ In particular, based on the facts and circumstances of this case, we find that the mistakes at issue here are sufficiently similar to those in the *Bishop Perry Order*, warranting a waiver of section 54.504(c) of the Commission's rules.²⁷ Grand Rapids committed unintentional, clerical errors when it initially inserted the incorrect FCC Form 470 number on its Funding Year 2006 application, and again when responding to PIA requests for additional information. We do not believe, however, that these mistakes warrant the complete rejection of Grand Rapids' application for E-rate funding. Rather, based on the record before us, we find that Grand Rapids complied with core program requirements.²⁸ Specifically, we find that Grand Rapids posted an FCC Form 470 to USAC's web site soliciting bids for the services at issue and waited 28 days before entering into an agreement with a service provider for the requested services. Additionally, we find that Grand Rapids had a signed multi-year contract as of March 2003, well before the time Grand Rapids submitted its Funding Year 2006 application to USAC. Importantly, Grand Rapids' appeal does not involve a misuse of funds and there is no evidence in the record that Grand Rapids engaged in activity to defraud or abuse the E-rate program. Thus, we find that denying Grand Rapids' request for funding would create undue hardship and prevent these otherwise eligible schools from receiving E-rate funding.

7. As the Commission recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied for ministerial or clerical errors.²⁹ We find that the action we take here promotes the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that Grand Rapids obtains access to discounted telecommunications and information services.³⁰

²⁶ See 47 C.F.R. § 54.723.

²⁷ See 47 C.F.R. §54.504(c); *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, para. 1 (2006) (*Bishop Perry Order*). The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

²⁸ See Request for Review at 2; see also FCC Form 471, Grand Rapids Public Schools (filed Feb. 15, 2006).

²⁹ *Bishop Perry Order*, 21 FCC Rcd 5316. As noted in the *Bishop Perry Order*, many applicants contend that the application process is complicated and time-consuming. *Id.* at 5319-20, para. 9. The Commission has started a proceeding to address, among other things, modifying the application and competitive bidding process for the schools and libraries support mechanism. See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005).

³⁰ 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

Although processing standards are necessary for the efficient administration of the program, rigid adherence to such application procedures in this case would result in an outcome conflicting with the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries most in need of support. As we consider fundamental reform to the schools and libraries universal service mechanism, the public interest and goals of the Act are best served by allowing Grand Rapids to substitute the incorrect FCC Form 470 with the correct establishing FCC Form 470 on its amended FCC Form 471 application. We therefore grant Grand Rapids' request and remand its application to USAC for further action consistent with this order.³¹ In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.³² We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the underlying application and issue an award or denial based upon a complete review and analysis no later than 60 calendar days from the release date of this order.

8. We emphasize the limited nature of this decision. We recognize that the Commission's filing deadlines and procedural rules are necessary for the efficient administration of the E-rate program. Thus, while we grant this appeal and waive section 54.504(c) of the Commission's rules, we continue to require E-rate applicants to timely submit complete and accurate information to USAC as part of the application process.

9. Finally, we are committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes.³³ Although we grant the appeal addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and 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 Commission rules, such proceedings can reveal instances in which universal service funds were improperly disbursed or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. We emphasize that we retain 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. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

³¹ We estimate that the appeal granted in this order involves an application for approximately \$412,000 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (Aug. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the universal service fund as a whole.

³² Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

³³ *See Bishop Perry Order*, 21 FCC Rcd at 5320, para. 11 (finding no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements).

IV. ORDERING CLAUSES

10. 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 under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the request for review filed by Grand Rapids Public Schools on June 8, 2007, IS GRANTED.

11. IT IS FURTHER ORDERED that, 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 sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c) IS WAIVED to the extent provided herein.

12. 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 under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL COMPLETE its review of the remanded application and SHALL ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.

13. IT IS FURTHER ORDERED, pursuant to sections 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
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Telecommunications Access Policy
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