

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Trenton City Schools) File No. SLD-267575
Brooklyn, New York.)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

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 an appeal filed by Trenton City School District (Trenton) of the decision of the Universal Service Administrative Company (USAC) reducing the funding sought by Trenton in Funding Year 2001 under the schools and libraries universal service support mechanism (also known as the E-rate program) on the grounds that Trenton sought E-rate discounts for three entities ineligible for E-rate support. Based on the record before us, as set forth below, it appears that this matter can be resolved through further discussions between USAC and the applicant, Trenton. Therefore, we remand the underlying application associated with this appeal to USAC for further action consistent with this Order. In doing so, we direct USAC to contact the applicant within 15 days from the release of this Order to resolve the inconsistencies in the submitted information and review this matter in light of any additional information provided by Trenton. To ensure that the underlying application is resolved expeditiously, we direct USAC to issue an award or denial based on a complete review and analysis no later than 90 days from release of this Order.

II. BACKGROUND

2. Under the E-rate program, only eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for E-rate discounts for eligible services. When USAC reviews an

1 Letter from Peter Harris, Trenton City School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 97-21, at 1 (filed July 30, 2002) (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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 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.

3 See 47 U.S.C. § 254(h)(7)(A); 47 C.F.R. § 54.501(b)-(d); USAC website, Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at 3-4 (FCC Form 471 Instructions) (explaining that only schools and libraries meeting statutory eligibility standards (continued...))

application and identifies an ineligible entity seeking support, it will deny funding for the requested service.⁴

3. In Funding Year 2001, USAC granted Trenton E-rate discounts on the purchase of \$722,824 of internal connections from its service provider, Avaya, as part of FCC Form 471 No. 267575, Funding Request Number (FRN) 725187.⁵ Trenton claims that the purchases were to equip 18 eligible schools; however, Trenton appears to have submitted one set of invoices for 16 schools and two sets of invoices for one school, Dunn Middle School.⁶ When USAC conducted a review of Trenton's application and asked Trenton for documentation concerning the schools included in FRN 725187, Trenton submitted a set of invoices that differed on purchase totals for some schools and also included purchases for some ineligible locations.⁷ Accordingly, USAC granted FRN 725187, but reduced the commitment amount by approximately \$145,000 to reflect the removal of three ineligible entities.⁸ Trenton subsequently filed an appeal with the Commission and provided a set of invoices for 18 eligible schools (although it did not include an invoice for Dunn Middle School and included two copies of an invoice for King Middle School, which had not been part of Trenton's initial submission to USAC) to support its assertion that FRN 725187 included only 18 eligible entities and no ineligible entities.⁹

III. DISCUSSION

4. We grant Trenton's appeal. As indicated above, it appears that the inconsistencies in the submitted invoices can be resolved through further discussions between USAC and the applicant. Correcting the inconsistencies regarding the submitted invoices would not, in and of itself, result in waste, fraud or abuse, or a failure to adhere to core program requirements. Accordingly, we remand the underlying application associated with this appeal to USAC for further action consistent with this Order. We direct USAC to contact Trenton within 15 days of the release date of this Order to determine which school locations were the actual recipients of the purchases Trenton made under FRN 725187. If the new information provided to USAC reveals that the total amount of purchases for eligible schools differs from the total funding amount originally committed to Trenton by USAC for FRN 725187, we direct USAC to issue a revised funding commitment decision letter to Trenton reflecting this finding.¹⁰ To ensure that the

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may apply for support for eligible services), http://www.universalservice.org/_res/documents/sl/pdf/471i_fy05.pdf (retrieved Oct. 28, 2008).

⁴ See 47 C.F.R. § 54.501(b)-(d); USAC website, School and Library Applicants, Eligibility Requirements, <http://www.usac.org/sl/applicants/step01/eligibility-requirements.aspx> (retrieved Oct. 28, 2008).

⁵ See Letter from USAC, Schools and Libraries Division, to Peter Harris, Trenton City School District at 6 (dated Oct. 31, 2001) (Funding Commitment Decision Letter).

⁶ Request for Review at 1; FCC Form 471, Trenton City School District, Attachment 21 (filed Aug. 30, 2001). The invoices submitted by Trenton to USAC were dated January 3, 2001. *Id.*

⁷ According to USAC's records, the invoices submitted by Trenton were dated January 14, 2000. See Facsimile from Rich Dilollo, USAC, to Peter Harris, Trenton Public Schools (dated Oct. 22, 2001) (reporting that three price quotes for Board of Education, Trenton High School, and Trenton Alternative, totaling approximately \$145,000 for Funding Request Number 725187 were questionable); Facsimile from Peter Harris, Trenton Public Schools, to Rich Dilollo, USAC (dated Oct. 23, 2001) (agreeing that purchases for Trenton High School and Trenton Alternative should not have been included and that the Board of Education should be removed if it is not eligible).

⁸ Funding Commitment Decision Letter at 6.

⁹ See Request for Review at Attachment.

¹⁰ We estimate that the appeal granted in this Order involves approximately \$145,000 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

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underlying application is resolved expeditiously, we direct USAC to issue an award or denial based on a complete review and analysis no later than 90 days from release of this Order.¹¹ We limit our finding herein to the issue of the requested funding amount for FRN 725187 only. If there are other issues with Trenton's application that would result in a commitment adjustment or request for further information, we direct USAC to act accordingly. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.¹² 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.

5. We stress 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.¹³ Although we grant the request for review addressed here, 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 improperly disbursed or in a manner inconsistent with the statute or the Commission's rules. To the extent 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

6. 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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that Trenton City School District's Request for Review IS GRANTED and its application REMANDED to USAC for further consideration in accordance with the terms of this Order.

7. IT IS FURTHER 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 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

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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.

¹¹ 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.

¹² 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.

¹³ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006).

remanded application and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order.

8. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau