

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Chester Upland School District
Chester, Pennsylvania
Lake Grove – Durham School
Medford, New York
Lower Yukon School District
Medford, New York
Santa Ana Unified School District
Santa Ana, California
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-429627, 431150
File Nos. SLD-507444, 507533
File Nos. SLD-416962, 417124,
417177, 417226, and 418655
File Nos. SLD-328651, 328797
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 the appeals filed by Chester Upland School District (Chester), Lake Grove-Durham School (Lake Grove), Lower Yukon School District (Lower Yukon), and Santa Ana Unified School District (Santa Ana) (collectively, petitioners).¹ The petitioners seek review of decisions

¹ In this order, we use the term “appeals” to generically refer to requests for review of decisions issued by the Universal Service Administrative Company (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). Letter from Michael Gillin, Chester Upland School District, to Office of the Secretary, Federal Communications Commission (filed Feb. 14, 2006) supplemented by Letter from Michael Gillin, Chester Upland School District, to Office of the Secretary, Federal Communications Commission (filed Dec. 6, 2007) (Chester Requests for Review); Letter from Joe Schmukler, Lake Grove – Durham School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 30, 2007) (Lake Grove Request for Review); Letter from Andrena Stone, on behalf of Lower Yukon School District, to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 28, 2005) (Lower Yukon Request for Review); Letter from Donald Trigg, Santa Ana Unified School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 9, 2007) (Santa Ana Request for Review).

by the Universal Service Administrative Company (USAC) denying their requests for funding from the schools and libraries universal service support mechanism, also known as the E-rate program, for Funding Years 2002, 2004, and 2006.² USAC denied the funding requests because it found that the petitioners failed to demonstrate their access to the resources required to effectively use the requested eligible services or to pay their non-discounted share for the services.³ Consistent with the Commission's *Academy of Excellence Order*, we grant these appeals and direct USAC to give the petitioners an opportunity to demonstrate their access to the necessary resources required by program rules.⁴ To ensure that USAC resolves the underlying applications expeditiously, we direct it to complete its review of these applications and issue an award or a 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, eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁵ To ensure that applicants are able to use the discounted services effectively, and thereby minimize waste, our rules require applicants to certify that they will have access to the necessary resources to finance both the non-discounted portion of the price of eligible services, and the facilities or services their technology plans indicate are required to effectively use the discounted services.⁶ Support for eligible services is conditioned 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.⁷ USAC may request documentation from applicants to confirm that they are observing this requirement, including budgets covering the relevant time period.

3. USAC selects some applicants for a selective review to ensure that they are following certain E-rate program rules.⁸ When USAC identifies problems with the budget or other initial documentation submitted by the applicant to meet the necessary resources requirement, USAC uses its discretion in determining whether to give an applicant an additional opportunity to show that it has met the requirement.⁹ USAC requires applicants that do not have an approved budget available to submit a

² See *supra* n. 1.

³ See 47 C.F.R. § 54.504(b)(2)(vi), (c)(1)(iii).

⁴ *Request for Review of the Decision of the Universal Service Administrator by Academy of Excellence, et al.*, File Nos. SLD-261209, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 8722 (2007) (*Academy of Excellence Order*).

⁵ See 47 C.F.R. §§ 54.501-503.

⁶ See 47 C.F.R. § 54.504(b)(2)(vi), (c)(1)(iii); *see also* 47 C.F.R. § 54.508(a).

⁷ *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) (*Fifth Report and Order*).

⁸ Specifically, during selective review, applicants must be able to demonstrate that they have secured access to all of the resources necessary to make effective use of the products and services for which they receive discounts. See *Undergo Selective Review*, <http://www.universalservice.org/sl/applicants/step08/undergo-selective-review/default.aspx> (retrieved Aug. 19, 2008).

⁹ See *Request for Review by Beginning With Children Charter School and Yeshiva Karlin-Stolin, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File Nos. SLD-256153 and 265665, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 936, 940, para. 11 (Com. Car. Bur. 2003).

signed letter from a school or library official explaining: (1) what phase of the approval process it is in; (2) whether its share of funding is contingent on any outside action (e.g., voter approval); and (3) whether, in the absence of such outside approval, it anticipates being able to pay its share of the funds required.¹⁰ In addition, the applicant must submit either a draft budget, which includes a resolution of a governing board authorizing the filing of the FCC Form 471 for a given amount and indicating the relevant timeframe, or documentation to indicate a reasonable expectation of a specific donation.¹¹

4. In the *Academy of Excellence Order*, the Commission explained that the necessary resources requirements are satisfied as long as: (i) when filing its FCC Form 471 application, an applicant has specific, reasonable expectations of obtaining the funding needed to ensure availability of the necessary resources; (ii) an applicant does not authorize USAC to pay support to the service provider for the eligible services until the applicant has received the funding and thus has the necessary resources to pay the applicant's share of the costs; and (iii) an applicant provides sufficient documentation to USAC of such funding and resource availability as USAC may request.¹² The Commission also gave direction to USAC that, if USAC has reason to believe that an applicant lacks the necessary resources for its funding request or that the documentation provided by the applicant is deficient, USAC shall: (1) inform the applicant promptly in writing of any and all deficiencies, along with a clear and specific explanation of how the applicant can remedy those deficiencies; and (2) permit the applicant to submit additional documentation, if any, within 15 calendar days from the date of receipt of notice in writing by USAC.¹³ If an applicant is unable to provide documentation of sufficient resources to use all the E-rate services it seeks within the 15-day period, USAC shall work with the applicant to identify the eligible services the applicant's resources will permit it to use effectively and reduce the applicant's funding request to include only those eligible services.¹⁴ That is, an applicant has the opportunity to remove funding requests so that it is receiving funds only for the services and equipment for which it can pay the non-discount portion and for which it can pay for the other resources necessary to use those E-rate services effectively.¹⁵

5. USAC denied the petitioners' E-rate funding requests because it found that the petitioners did not provide sufficient documentation to demonstrate that they met the E-rate program's necessary resources requirement.¹⁶ The petitioners subsequently filed their appeals with the Commission.¹⁷

III. DISCUSSION

6. We grant these four appeals as explained below and remand the underlying applications associated with these appeals to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the

¹⁰ See USAC Website, Step 8: Selective Review Guidance, <http://www.usac.org/sl/applicants/step08/undergo-selective-review/selective-review-info-request-instructions.aspx#part25> (retrieved Aug. 19, 2008).

¹¹ *Id.*

¹² *Academy of Excellence Order*, 22 FCC Rcd at 8726, para. 7.

¹³ *Id.* at 8728-29, paras. 11-13.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See 47 C.F.R. § 54.504(b)(2)(vi), (c)(1)(iii); see also 47 C.F.R. § 54.508(a).

¹⁷ See *supra* note 1.

applications and issue a decision based on a complete review and analysis no later than 90 calendar days from release of this order.¹⁸

7. We grant Chester's appeal. During a selective review, USAC found that Chester failed to provide USAC with certain documentation that USAC sought regarding its Funding Year 2004 request in a timely manner.¹⁹ Chester claims, however, that it has the documentation to demonstrate that it satisfied the necessary resources requirement, and also explains that personnel and financial problems delayed its response to USAC.²⁰ Specifically, Chester notes that the Pennsylvania Department of Education declared it a financially distressed district in June 1994 and replaced its school board with a three-member board of control, which includes the governor of Pennsylvania.²¹ Chester has remained in this status, hindered by a high turnover among its administrators, and it needed to petition a county court in May 2005 for approximately \$15 million in unfunded debt to have its schools remain open through the 2004-2005 school year and to begin the 2005-2006 school year.²² In addition, Chester states that the Pennsylvania Department of Education contracted to have almost all of the schools in Chester's district managed by a private firm for the 2001-2002 through the 2004-2005 school years.²³ We thus find that Chester's exceptional financial and personnel problems justify granting it another opportunity to demonstrate to USAC that it met the necessary resources requirement for Funding Year 2004.

8. We grant Lake Grove's appeal. USAC found that a letter from Lake Grove's treasurer stating that the Lake Grove board of directors had authorized the required funding was inadequate in demonstrating that Lake Grove met the necessary resources requirement.²⁴ Lake Grove asserts, however, that USAC had accepted the same letters as adequate responses in previous years.²⁵ We find that it was reasonable for Lake Grove to assume that its treasurer's letter was sufficient for Funding Year 2006. We find that Lake Grove acted reasonably and in good faith, especially in light of the fact that it offered to provide additional information if USAC wanted it.²⁶ Thus, we find that USAC should give Lake Grove another opportunity to demonstrate that it met the necessary resources requirement for Funding Year 2006.

¹⁸ 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.

¹⁹ See Letter from USAC, Schools and Libraries Division, to Larry Jennings, Chester-Upland School District at 1-2 (dated Dec. 13, 2005).

²⁰ See Chester Requests for Review at 1-5.

²¹ *Id.* at 2.

²² *Id.* at 2-3.

²³ *Id.*

²⁴ See Letter from USAC, Schools and Libraries Division, to Joe Schmukler, Lake Grove-Durham at 2 (dated Jan. 4, 2007) (SLD-507444); Letter from USAC, Schools and Libraries Division, to Joe Schmukler, Lake Grove-Durham at 2 (dated Jan. 4, 2007) (SLD-507533).

²⁵ See Lake Grove Request for Review at 1.

²⁶ *Id.* at 1-2.

9. We grant Lower Yukon's appeal. Although USAC found that Lower Yukon's budget was inadequate for its funding request,²⁷ USAC failed to identify the defect it found in Lower Yukon's documentation.²⁸ We find that this denied Lower Yukon the chance to respond to USAC's finding in its appeal to USAC.²⁹ Thus, we grant Lower Yukon another opportunity to demonstrate to USAC that it met the necessary resources requirement for Funding Year 2004.

10. Finally, we grant Santa Ana's appeal. USAC sought to rescind funding for Santa Ana for Funding Year 2002 for failure to meet the necessary resources rule.³⁰ We find, however, that it was reasonable for Santa Ana, when initially questioned in 2003 about its Funding Year 2002 budget, to provide actual – rather than projected – figures for that budget, thereby confirming that it had sufficient funds.³¹ If USAC needs additional documentation regarding the state of Santa Ana's budget prior to the start of Funding Year 2002, it should provide Santa Ana with another chance to submit that documentation on remand.

11. Balancing the facts and the circumstances of these specific cases, we find that good cause exists to grant these appeals and remand them to USAC for further processing. Under the policy announced in the *Academy of Excellence Order*, we find the actions of the petitioners sufficient to warrant further efforts by USAC to clarify whether the petitioners met the necessary resources requirement for the relevant funding year.³² In addition, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Therefore, we direct USAC to give petitioners 15 calendar days after receiving notice in writing from USAC to submit the relevant budget or other specific documentation that USAC deems appropriate in these cases.³³ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.³⁴ 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.

²⁷ See, e.g., Letter from USAC, Schools and Libraries Division, to Karen Goodwin, Lower Yukon School District at 5 (dated Apr. 19, 2005).

²⁸ See, e.g., Letter from USAC, Schools and Libraries Division, to Saul Friedman, on behalf of Lower Yukon School District at 1-2 (dated Sept. 27, 2005).

²⁹ Lower Yukon Request for Review at 4.

³⁰ See, e.g., Letter from USAC, Schools and Libraries Division, to Karen Aeppli, Santa Ana Unified School District (dated Mar. 14, 2006).

³¹ Santa Ana Request for Review at 1-4.

³² See *Academy of Excellence Order*, 22 FCC Rcd at 8727, para. 8.

³³ Applicants will be presumed to have received notice five days after such notice is postmarked by USAC. USAC, however, shall continue to work beyond the 15 days with applicants attempting in good faith to ensure that they purchase eligible services for which they have the resources to use effectively.

³⁴ 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.

12. We emphasize the limited nature of this decision. Although we grant these appeals, this order does not alter the obligation of participants in the E-rate program to comply with the Commission's rules requiring applicants to demonstrate to USAC that they have access to the necessary resources to use the requested eligible services.³⁵ We continue to require E-rate applicants to submit complete and accurate information to USAC as part of the application review process. The direction we provide USAC will not lessen or preclude any application review procedures of USAC. Indeed, we retain our commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and takes steps to educate applicants in a manner that fosters program participation. We note that granting these appeals should have a minimal impact on the universal service fund because the monies needed to fund the underlying applications, should they all be fully funded, have already been collected and held in reserve.³⁶

13. 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 the appeals addressed here, the Commission reserves the right to conduct audits and investigations to determine compliance with the E-rate program rules and requirements. Because audits and 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 disbursed improperly 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

14. Accordingly, IT IS 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 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 requests for review filed by Chester Upland School District, Lake Grove – Durham School, Lower Yukon School District, and Santa Ana Unified School District ARE GRANTED and REMANDED to USAC for further action consistent with this order.

15. 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 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 each remanded application reviewed in this order 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.

³⁵ See 47 C.F.R. §§ 54.508(a)(3) and (4); 54.504(b)(2)(vi) and (c)(1)(iii).

³⁶ We estimate that the appeals granted in this order involve applications for approximately \$2 million. 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).

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

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
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