

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
District of Columbia Public Schools)	File Nos. SLD-460034, 460078,
)	478847, 478870, 479007
)	
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 two Requests for Review filed by Achieve Telecom Network of MA, LLC (Achieve Telecom) and E-Rate Elite Services, Inc. (E-Rate Elite) (collectively Petitioners) on behalf of the applicant, District of Columbia Public Schools, Washington, D.C. (DCPS).¹ Petitioners seek review of a decision by the Universal Service Administrative Company (USAC) denying DCPS's Funding Year 2005 applications for discounted services under the schools and libraries universal service support mechanism, also known as the E-rate program, on the ground that the applicant failed to certify that E-rate Elite was authorized by DCPS to prepare the responses to USAC's Selective Review Information Request (SRIR).² We find that, prior to USAC denying DCPS's applications for funding under the E-rate program, USAC should have contacted DCPS and given it the opportunity to provide the SRIR certification and any necessary information to complete the review after failing to obtain the information from E-Rate Elite, the applicant's consultant. We thus 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

¹ See Letter from Joy Jackson, Achieve Telecom, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 13, 2005) (regarding File No. SLD-479007) (Achieve Telecom Request for Review); Letter from Garnet Person, E-Rate Elite Services, Inc., to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 13, 2006) (regarding File Nos. SLD-460078, 460034, 478847, 478870, 479007) (E-Rate Elite Request for Review). Achieve Telecom and E-Rate Elite are the service provider and consultant, respectively, for DCPS. 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). In this order, we use the term "appeals" to generally refer to requests for review of decisions by USAC.

² See Letter from USAC, Schools and Libraries Division, to Garnet Person, District of Columbia Public Schools (dated Sept. 1, 2005) (Funding Commitment Decision Letter); Letter from USAC, Schools and Libraries Division, to Garnet Person, E-Rate Elite Services (dated Jan. 12, 2006) (Administrator's Decision). Funding Year 2005 started on July 1, 2005, and ended on June 30, 2006.

applications and issue awards or denials based on a complete review and analysis, no later than 90 calendar days from the release date of this order.

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.³ An applicant must seek competitive bids for all services eligible for support and subsequently enter into an agreement with a service provider/s for the requested services.⁴ The applicant then files an FCC Form 471 with USAC requesting support for the services ordered by the applicant.⁵ On the FCC Form 471, the applicant must certify that it meets the eligibility requirements for receiving discounted services.⁶

3. USAC reviews each FCC Form 471 to ensure that universal service support is committed only for eligible products and services as well as eligible uses by eligible entities.⁷ USAC selects some applicants for selective review to ensure that they are following certain Commission program rules.⁸ As part of selective review, USAC requests applicants, among other things, to provide information regarding their competitive bidding process and necessary resources documentation to determine whether applicants have complied with the E-rate program rules.⁹ USAC requires that the applicant or the applicant's authorized representative (such as a consultant) complete and submit the Selective Review Information Request (SRIR) and that both the authorized representative and the applicant sign the certification page of the SRIR.¹⁰ If the applicant's authorized representative responds to the SRIR, the applicant must submit a letter of agency or other agreement authorizing the consultant to act on the applicant's behalf.¹¹ All requested information must be received by USAC within 30 calendar days from the date of the SRIR with limited extensions provided by USAC.¹² During the course of the review, if USAC identifies problems with the initial documentation or the information submitted is incomplete, USAC will contact the

³ 47 C.F.R. §§54.502, 54.503.

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ *See, e.g.*, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

⁶ *See* FCC Form 471; *see also* 47 C.F.R. § 54.504.

⁷ USAC website, Schools and Libraries, Undergo Application Review, <http://www.usac.org/sl/applicants/step08/default.aspx> (retrieved Aug. 12, 2008) (Application Review Process).

⁸ *Id.*

⁹ *See id.*

¹⁰ *See, e.g.*, Letter from USAC, Schools and Libraries Division, to Garnet Person, District of Columbia Public Schools (dated Jul. 12, 2005) (July 12 Selective Review Information Request); Letter from USAC, Schools and Libraries Division, to Garnet Person, District of Columbia Public Schools (dated Jul. 28, 2005) (July 28 Selective Review Information Request) (collectively, Selective Review Information Requests); USAC website, Schools and Libraries, Selective Review Information Request (SRIR), http://www.usac.org/_res/documents/sl/pdf/selective-reviews/srir-sample.pdf (retrieved Aug. 12, 2008).

¹¹ *See* Selective Review Information Requests.

¹² *Id.*

respondent, which may be the applicant or the applicant's authorized representative, and provide an opportunity for the respondent to provide additional information or supporting documentation required to complete the review.¹³ If USAC does not receive the requested documentation or the information submitted is incomplete, USAC considers the application deficient.¹⁴

4. *Requests for Review.* On July 12, 2005, USAC sent E-rate Elite, the contact listed on DCPS's FCC Forms 471, a SRIR requesting DCPS's fiscal year 2004-2005 budget information, competitive bidding documentation, and a copy of the consulting agreement between DCPS and E-Rate Elite.¹⁵ Because E-rate Elite did not respond to the SRIR, USAC sent the SRIR again to E-rate Elite on July 28, 2005.¹⁶ On July 28, 2005, E-rate Elite requested an extension until August 19, 2005, to provide USAC with the requested information.¹⁷ USAC granted E-rate Elite's request for an extension.¹⁸ On August 23, 2005, E-Rate Elite submitted to USAC DCPS's fiscal year 2002-2003 budget information and a copy of a consulting agreement between E-Rate Elite and DCPS in which the dates and signatures were redacted.¹⁹ In addition, the SRIR certification page was not signed by either E-Rate Elite or DCPS, as required by USAC program procedures.²⁰ As of August 26, 2005, USAC had not received a complete response to the SRIR or any written requests for an additional extension of time to submit the requested information.²¹ On September 1, 2005, USAC thus denied DCPS's Funding Year 2005 applications, submitted by E-Rate Elite, for discounted services under the E-rate program, on the ground that the applicant failed to certify who prepared the responses to USAC's SRIR.²² E-rate Elite subsequently appealed the denial internally within USAC, but its appeal was denied by USAC.²³ USAC found, upon review of the appeal and all relevant documentation submitted by E-rate Elite, that DCPS failed to

¹³ See, e.g., *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) (the Bureau provided USAC with reasonable discretion regarding whether further contacts for information should be made).

¹⁴ See, e.g., *Request for Review by Massachusetts Department of Education Malden, Massachusetts, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-149217, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 7768, 7772, para. 11 (Com. Car. Bur. 2001) (the Bureau determined that USAC properly denied funding where the applicant failed to supply the requested information in support of its necessary resources certification).

¹⁵ See July 12 Selective Review Information Request.

¹⁶ See July 28 Selective Review Information Request.

¹⁷ Administrator's Decision at 2.

¹⁸ See E-mail from USAC, Schools and Libraries Division, to Garnet Person, District of Columbia Public Schools (dated Jul. 28, 2005); *supra* para. 3 and n.14 (giving USAC discretion to provide a respondent with additional time to submit any requested information).

¹⁹ See E-mail from Garnet Person, District of Columbia Public Schools, to USAC, Schools and Libraries Division (dated Aug. 23, 2005) (Selective Review Response).

²⁰ *Id.*

²¹ Administrator's Decision at 2.

²² See Funding Commitment Decision Letter.

²³ See Administrator's Decision.

provide sufficient documentation in response to the SRIR and, therefore, USAC was unable to determine that DCPS was in compliance with E-rate program rules.²⁴ USAC also stated that, during the review, it sought additional information from E-rate Elite and notified E-rate Elite that this information needed to be provided within seven days but that E-rate Elite failed to provide the information within seven days or within any agreed-upon extended timeframe.²⁵

5. E-rate Elite and Achieve Telecom, DCPS's service provider, subsequently filed the instant Requests for Review with the Commission.²⁶ Specifically, E-Rate Elite argues that the SRIR certification is redundant of certifications made by DCPS in previously submitted E-rate documents.²⁷ E-rate Elite claims that, as the contact on DCPS's FCC Forms 471, it was an authorized representative of DCPS for purposes of obtaining information associated with the application and that the superintendent of DCPS had certified the FCC Forms 471.²⁸ E-rate Elite also argues that its failure to provide the necessary information to USAC was a result of miscommunication between E-rate Elite and USAC, personnel shortages due to vacation schedules, and the resignation of the primary person responsible for E-rate at DCPS.²⁹ Achieve Telecom claims that the SRIR certification page was not signed or timely submitted because DCPS had experienced numerous administrative changes, including the selection of a new superintendent, and the resignation of DCPS's Chief Technology Officer who left prior to signing the certification page.³⁰

²⁴ *Id.* at 1-2.

²⁵ *Id.* at 2. To conduct application reviews, USAC has put in place administrative measures to ensure the prompt resolution of applications. See *Request for Review by Marshall County School District, 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, 97-21, Order, 18 FCC Rcd 4520, 4522, para. 6 (Wireline Comp. Bur. 2003). In Funding Year 2005, one such measure was that applicants were required to respond to USAC's requests for additional information necessary to complete their applications within seven days of being contacted. *Id.* Currently, USAC provides applicants with 15 days to respond to its requests for additional information. See USAC website, Schools and Libraries, Deadline for Information Requests, <http://www.universalservice.org/sl/applicants/step08/deadline-for-information-requests.aspx> (retrieved Aug. 12, 2008). If applicants do not respond within this time period, USAC reviews the application based on the information before it. Administrator's Decision at 2.

²⁶ See E-rate Elite Request for Review; Achieve Telecom Request for Review. Achieve Telecom did not file an appeal with USAC.

²⁷ E-Rate Elite Request for Review at 1-2.

²⁸ *Id.* at 2.

²⁹ See *id.* at 2-5.

³⁰ See Achieve Telecom Request for Review at 1. As part of its appeal, Achieve Telecom also requests that the Commission extend the deadline for the delivery of services to allow for the anticipated 12 months of service. *Id.* Because we grant Achieve's appeal and remand the underlying application to USAC for further action consistent with this order, USAC will automatically extend the service delivery deadline in this instance. See USAC website, Schools and Libraries, Service Delivery Deadlines and Extension Requests, <http://www.usac.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (retrieved Aug. 12, 2008). Thus, this issue is moot. Any further requests for the extension of the service delivery deadline, upon issuance of a revised FCDL by USAC, must be submitted to USAC for approval. *Id.*

III. DISCUSSION

6. We grant the appeals filed by E-rate Elite and Achieve Telecom on behalf of DCPS to the extent described below.³¹ Based on the record before us, we find that USAC should have contacted DCPS and given DCPS the opportunity to provide the SRIR certification and any necessary information during the selective review process after USAC failed to obtain the information from its consultant, E-Rate Elite. As indicated above, during selective review, USAC asked E-Rate Elite several times to provide budget documentation, competitive bidding information, and a copy of the consulting agreement between E-Rate Elite and DCPS.³² In addition, USAC also provided E-rate Elite with several extensions to provide the necessary documentation to USAC.³³ The record does not indicate, however, whether USAC attempted to contact the applicant, DCPS, to request the information needed to complete its review or to confirm that DCPS authorized E-rate Elite to act on its behalf in submitting its response to the SRIR.³⁴ Rather, the record reflects that USAC copied the State E-rate Coordinator rather than DCPS on its second request for information during selective review.³⁵ We thus find that, prior to denying DCPS's Funding Year 2005 applications, USAC should have contacted DCPS directly to obtain the necessary authorization for the documentation submitted by E-Rate Elite and to provide any further information necessary to complete its review. In addition, we find that there is no evidence at this time in the record that DCPS, E-Rate Elite, or Achieve Telecom engaged in any activity intended to defraud or abuse the E-rate program. We therefore grant the appeals filed by E-rate Elite and Achieve Telecom and remand the underlying applications to USAC for further action consistent with this order.

7. In remanding the underlying applications to USAC, we direct USAC to accept the documentation submitted by E-Rate Elite on DCPS's behalf. We determine that, based on the record before us, E-rate Elite was authorized to act on behalf of DCPS in responding to the SRIR. E-rate Elite provided a consultant agreement between itself and DCPS explaining that it was a redacted copy meant to withhold certain confidential information.³⁶ Additionally, an employee of E-Rate Elite was listed as the contact person for DCPS's applications, thus, USAC forwarded all correspondence regarding DCPS to E-rate Elite.³⁷ To supplement E-rate Elite's filing, we direct USAC to contact DCPS directly to obtain the SRIR certification and any additional information needed at this time to complete review of DCPS's Funding Year 2005 applications. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's applications.³⁸ We remind USAC of its obligation to

³¹ We estimate that the appeals granted in this order involve applications for approximately \$31,121,553.84 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). We thus determine that the action we take today should have a minimal effect on the universal service fund as a whole.

³² *See supra* para. 4.

³³ *Id.*

³⁴ *See id.*; Administrator's Decision.

³⁵ *See* Administrator's Decision at 2; July 28 Selective Review Information Request.

³⁶ *See* E-Rate Elite Request for Review at 3.

³⁷ *See* FCC Form 471, District of Columbia Public Schools (filed Jan. 20, 2005).

³⁸ 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

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 this matter is resolved expeditiously, we direct USAC to complete its review of the applications and issue awards or denials based on a complete review and analysis no later than 90 calendar days from the release date of this order.³⁹ As indicated above, the Bureau has given USAC reasonable discretion regarding whether further contacts for information should be made with the contact person listed on the applicant's application.⁴⁰ Consistent with our direction provided in this order, however, when USAC receives documentation submitted in response to a SRIR by an applicant's authorized representative that is not fully responsive (including the SRIR certification), USAC shall first, at a minimum, contact the applicant directly to request the necessary documentation prior to denying an applicant's funding requests.⁴¹

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 the appeals discussed 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 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. We remain 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 delegated under 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 Achieve Telecom Network of MA, LLC and E-Rate Elite Services, Inc. ARE GRANTED to the extent described herein, and the underlying applications ARE REMANDED to USAC for further processing in accordance with the terms of this order.

10. 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, and 54.722(a), that USAC SHALL COMPLETE its review of the applications and issue

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.

³⁹ 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.

⁴⁰ See *supra* nn.14-15.

⁴¹ This direction applies to all pending and future applications for funding under the E-rate program.

awards or denials based on a complete review and analysis no later than 90 calendar days from the release date of this order.

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

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
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