

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Appeal of the Decision
of the Universal Service Administrator
Hickory Public Schools District
Schools and Libraries Universal Service Support
Mechanism
File Nos. SLD-460885, et al.
CC Docket No. 02-6

ORDER

Adopted: August 2, 2006

Released: August 2, 2006

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request for review of Hickory Public Schools District (Hickory) of a decision by the Universal Service Administrative Company (USAC) denying funding from the schools and libraries universal service support mechanism (also known as the E-rate program) on the ground that Hickory failed to respond to USAC's request for information within the USAC-specified time frame.

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. Given the enormous volume of applications and other submissions that USAC processes and reviews each year, it is necessary for USAC to establish measures to ensure prompt resolution of applications.

1 This appeal was filed pursuant to section 54.719(c) of the Commission's rules, which states 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. §§ 54.501-54.503.

additional information from applicants.<sup>3</sup> USAC requires that a response to all of its requests for additional or clarifying information or documentation be made within seven days of the applicant being contacted, unless explicitly extended by USAC.<sup>4</sup> If this deadline is not met, or the response provided is incomplete, USAC makes a funding determination based on the information it has in its possession.

4. On February 18, 2005, Hickory filed nine applications seeking funding for a total of almost \$450,000 in services.<sup>5</sup> On August 8, 2005, USAC faxed Hickory's E-rate consultant a request for additional documentation as part of a "selective review,"<sup>6</sup> to which Hickory's consultant responded on August 31, 2005.<sup>7</sup> On September 7, 2005, USAC sent another request to the consultant,<sup>8</sup> to which he responded on September 14, 2005.<sup>9</sup> On October 5, 2005, USAC sent Hickory's consultant a third request, claiming that he had not responded fully to its previous request.<sup>10</sup> Hickory's consultant did not respond to the October 5 request, and USAC denied its funding requests for failure to demonstrate that, when Hickory filed its FCC Form 471, Hickory had secured access to the funds needed to pay its portion of the charges.<sup>11</sup>

5. Hickory states that it never received a copy of the October 5 letter, and its consultant has been unable to locate a copy.<sup>12</sup> After its funding was denied, Hickory attempted to get a copy of the

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<sup>3</sup> See *Request for Review by Boone County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. USAC-220067, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd. 22467, 22469, para. 5 (Wireline Comp. Bur. 2002); *Request for Review by Henryetta Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. USAC-268075, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd. 17423, 17424, para. 3 (Wireline Comp. Bur. 2002).

<sup>4</sup> See SLD website, <http://www.sl.universalservice.org/reference/deadline.asp>. See also *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.*, File No. USAC-220105, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 4520, 4522, para. 6 (Wireline Comp. Bur. 2003).

<sup>5</sup> See Hickory's FCC Form 471 applications 460885, 485886, 485971, 486067, 486087, 486216, 486565, 486583, and 486768, filed Feb. 18, 2005.

<sup>6</sup> See Facsimile from Bob Leipow, USAC, to Jon Slaughter, eRate Consulting Services, dated Aug. 8, 2005 (E-rate Selective Review Information Request). Selective reviews are used by USAC to ensure that applicants are following certain FCC program rules. Those applications selected by USAC for the review are asked to provide documentation regarding 1) their competitive bidding and vendor selection process; 2) their ability to pay their share of the cost of the products and services eligible for schools and libraries program support; and 3) their possession of the other resources necessary to make effective use of the requested discounts. See USAC, School and Library Applicants, Step 8, Undergo Application Review, <http://www.universalservice.org/sl/applicants/step08/> (last retrieved July 28, 2006).

<sup>7</sup> See E-mail from Jon Slaughter, eRate Consulting Services, on behalf of Hickory, to Bob Leipow, USAC, dated Aug. 31, 2005.

<sup>8</sup> See Facsimile from Bob Leipow, USAC, to Jon Slaughter, eRate Consulting Services, dated Sept. 7, 2005 (Funding Year 2005 Selective Review Follow-up Questions).

<sup>9</sup> See E-mail from Jon Slaughter, eRate Consulting Services, on behalf of Hickory, to Bob Leipow, USAC, dated Sept. 14, 2005.

<sup>10</sup> See Facsimile from Bob Leipow, USAC, to Jon Slaughter, eRate Consulting Services, dated Oct. 5, 2005.

<sup>11</sup> See Letters from Schools and Libraries Division, Universal Service Administrative Company, to Jon Slaughter, Hickory, dated Nov. 9, 2005 (Funding Commitment Decision Letters).

<sup>12</sup> See Appeal and Request for Review and Expedited Relief on Behalf of the Hickory Public Schools District, CC Docket No. 02-6, at 6, dated May 19, 2006 (Hickory Appeal).

correspondence from USAC, but was unable to do so.<sup>13</sup> Hickory argues that it responded to all USAC requests of which it had knowledge,<sup>14</sup> and asks that it now be allowed to respond to USAC's outstanding requests.<sup>15</sup> Hickory also petitions the Commission to recognize that it has already provided all relevant budget information, which is substantial enough to show that Hickory is able to support its portion of the funding requests.<sup>16</sup>

### III. DISCUSSION

6. In this Order, we grant Hickory's request for review and remand the underlying applications associated with its appeal to USAC for further action consistent with this Order. Based on the record, we find that good cause exists to grant this appeal. Even if Hickory's consultant failed to respond within the time frame, this error was procedural and involved a USAC administrative deadline, not a failure to adhere to a core program requirement, misuse of funds, or violation of a Commission rule. As the Commission recently found, given that this error was procedural, not substantive, we find that the complete rejection of these applications is not warranted.<sup>17</sup>

7. Furthermore, it appears that Hickory may have provided the information in question.<sup>18</sup> While we do not make a finding here as to whether Hickory has provided all requested relevant budget information, we find that USAC should review the information in its possession to ensure that it actually requires additional information from Hickory to process its application. We also note that Hickory attempted to contact USAC several times to determine what information it had not provided after receiving a rejection of its application and appeal.<sup>19</sup> As the Commission recently noted in *Bishop Perry Middle School*, USAC should reach out to applicants in order to ensure the successful processing of applications.<sup>20</sup> As such, we direct USAC to work with Hickory to resolve any remaining issues related to these applications.<sup>21</sup> If, after conducting this review, USAC still believes that additional information is required of Hickory in order to make an informed decision on these applications, USAC shall so inform Hickory and Hickory shall be offered a reasonable opportunity to provide the additional information.

8. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of Hickory's applications, 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. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines are necessary for the efficient administration of the

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<sup>13</sup> *Id.* See also *id.*, Item B.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.*

<sup>17</sup> *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, para. 6 (rel. May 19, 2006) (*Bishop Perry Middle School*).

<sup>18</sup> Hickory Appeal at 4-5.

<sup>19</sup> Hickory Appeal at 4, 6 and Item B.

<sup>20</sup> *Bishop Perry Middle School* at paras. 23-24.

<sup>21</sup> Hickory states that it contacted USAC in an attempt to obtain the information requests that were sent to its consultant. See Hickory Appeal at 6. Hickory states that it was told by the reviewer at USAC that he could not provide the original information requests. If that is accurate, we note that, in the future, USAC should work with applicants to keep them reasonably informed as USAC processes their applications. See *Bishop Perry Middle School* at paras. 23-24.

schools and libraries E-rate program. Although we grant the appeal before us, our action here does not eliminate USAC's deadlines for processing applications.<sup>22</sup> In addition, this decision is not intended to reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. We continue to require E-rate applicants to submit complete and accurate information to USAC as part of the application review process.

9. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeal addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules or 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 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 process. 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.

#### **IV. ORDERING CLAUSES**

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority under 54.722(a) of the Commission's rules, 47 C.F.R. § 54.722(a), 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 Hickory Public Schools District Request for Review IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

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 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, USAC SHALL COMPLETE its review of each 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.

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<sup>22</sup> We note that the Commission has initiated a proceeding to address whether particular deadlines should be modified. *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, FCC 05-124, para. 29 (2005).

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

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Deputy Chief  
Wireline Competition Bureau