

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

In the Matter of	)	
	)	
Request for Review of a Decision of the	)	
Universal Service Administrator by	)	
	)	
Providence Public School District	)	File No. SLD-470293
Providence, Rhode Island	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: August 15, 2006**

**Released: August 15, 2006**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the Request for Review filed by Providence Public School District (Providence School) of a decision by the Universal Service Administrative Company (USAC) denying Providence School discounted services under the schools and libraries universal service support mechanism.<sup>1</sup> USAC found that the requested service sought by Providence School for Basic Maintenance of Internal Connections was not being used in accordance with the Commission's rules.<sup>2</sup> For the reasons discussed below, we remand the appeal to USAC for action consistent with this Order.<sup>3</sup> To ensure that the appeal is resolved expeditiously, we direct USAC to complete its review of this application and 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 schools and libraries universal service support mechanism, also known as 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.<sup>4</sup>

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<sup>1</sup> Letter from Arthur J. Mendonca, Providence Public Schools, to Federal Communications Commission, filed Jan. 6, 2006 (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 the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Arthur J. Mendonca, Providence Public Schools, dated November 23, 2005 (USAC Decision on Appeal); 47 C.F.R. § 54.506(b).

<sup>3</sup> See *infra* paras. 7-8.

<sup>4</sup> 47 C.F.R. §§ 54.501-54.504.

Applicants may only seek support for eligible services.<sup>5</sup> In order to assist applicants in their efforts to request only eligible services, the Commission releases a list of eligible services each year.<sup>6</sup> Based on this list of eligible services and the Commission's Part 54 rules, USAC denies funding for services that are identified as ineligible for E-rate universal service support. Where the total requested for ineligible services exceeds 30 percent of the total for any individual funding request, the Commission's rules require USAC to deny the entire funding request.<sup>7</sup> An applicant, however, can file a separate application for certain services if it is unsure which services are eligible.<sup>8</sup>

3. In the *Universal Service Order*, the Commission determined that support for internal connections includes "basic maintenance services" that are "necessary to the operation of the internal connections network."<sup>9</sup> Subsequently, in the *Schools and Libraries Third Report and Order*, the Commission provided further detail on which maintenance services are "necessary" under the terms of the *Universal Service Order*.<sup>10</sup> The Commission found that basic maintenance services are eligible for universal service support as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services.<sup>11</sup> Specifically, the Commission determined that basic maintenance includes repair and upkeep of previously purchased eligible hardware, wire, and basic technical support including configuration changes.<sup>12</sup> It noted that basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.<sup>13</sup>

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<sup>5</sup> See 47 C.F.R. § 54.504; Instructions for Completing the Universal Service Schools and Libraries Services Ordered and Certification Form, OMB 3060-0806, at 17 (November 2004) (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities and uses); see also *Request for Review by Chelmsford Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-121771, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 761, 762, para. 3 (Com. Car. Bur. 2002).

<sup>6</sup> See 47 C.F.R. § 54.522.

<sup>7</sup> See 47 C.F.R. § 54.504(d).

<sup>8</sup> See <http://www.universalservice.org/sl/applicants/step07/funding-requests.aspx>.

<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9021-22, para. 460 (1997) (*Universal Service Order*).

<sup>10</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26921-22 para. 23 (2003) (*Schools and Libraries Third Order*).

<sup>11</sup> *Id.*; see also 47 C.F.R. 54.506(b).

<sup>12</sup> *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26921-22, para. 23. The Commission also concluded, however, that on-site technical support is not necessary to the operation of the internal connection network when off-site technical support can provide basic maintenance on an as-needed basis. *Id.* In doing so, the Commission determined that technical support, including on-site Help Desks, is not eligible if it provides any ineligible features or functions. *Id.* at 26922, para. 24. Thus, the Commission concluded that any technical support contract that provides more than basic maintenance will be ineligible for discounts. *Id.*

<sup>13</sup> *Id.* at 26921-22, para. 23.

4. In Funding Year 2005, Providence School sought \$957,010.00 for Basic Maintenance of Internal Connections.<sup>14</sup> On November 2, 2005, USAC denied Providence School's application, explaining in the funding commitment decision letter that "[t]he service/product being requested is not being used in accordance with program rules."<sup>15</sup> On November 7, 2005, Providence School appealed USAC's denial of its Funding Year 2005 application.<sup>16</sup>

5. On November 23, 2005, USAC denied Providence School's appeal, finding that the services requested were beyond Basic Maintenance because they included monitoring and network configuration management.<sup>17</sup> In its decision on appeal, USAC referred to the responses to Providence School's Request for Proposal (RFP) filed by UNICOM Technology Group (UNICOM) and Systems Support Corporation (SSC), the service providers that were ultimately selected by Providence School to provide maintenance on the internal connections.<sup>18</sup> Specifically, USAC reviewed these responses to Providence School's RFP and found language indicating that the service providers would "observe and analyze network and server performance" and provide "monthly reports documenting Server and Network Configurations."<sup>19</sup> USAC determined, therefore, that the service providers would be providing monitoring and network configuration management that go beyond basic maintenance and are therefore ineligible for E-rate universal service support.<sup>20</sup> Providence School then filed the instant Request for Review with the Commission.<sup>21</sup>

6. In its Request for Review, although Providence School acknowledges that the terms cited by USAC were included in the introductory sections of the UNICOM and SSC's responses to its RFP, Providence School explains that UNICOM and SSC inadvertently recycled old bids in response to Providence School's 2005 RFP.<sup>22</sup> Providence School further contends that both providers have a clear understanding that network monitoring and configuration management are not part of their basic maintenance contracts.<sup>23</sup> To provide support for its contention, Providence School attached to its Request for Review written clarifications from both UNICOM and SSC explaining the work to be performed and that they were not providing the specific services of network monitoring or configuration management.<sup>24</sup>

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<sup>14</sup> FCC Form 471, Providence Public School District, certified Feb. 16, 2005 (Providence School FCC Form 471).

<sup>15</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Arthur J. Mendonca, Providence Public School District, dated Nov. 2, 2005 (Funding Commitment Decision Letter).

<sup>16</sup> See Letter from Arthur J. Mendonca, Providence Public School District, to Schools and Libraries Division, Universal Service Administrative Company, dated Nov. 7, 2005 (Providence School Appeal to USAC).

<sup>17</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Arthur J. Mendonca, Providence School District, dated Nov. 23, 2005 (USAC Decision on Appeal).

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Request for Review.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> See Letter from Melissa McDermott, UNICOM, to Arthur J. Mendonca, Providence Public Schools, dated Dec. 12, 2005 (UNICOM Letter); Letter from William MacFee, SSC, to Arthur J. Mendonca, Providence Public Schools, dated Dec. 15, 2005 (SSC Letter).

Thus, Providence School argues that the contracts were limited to Basic Maintenance of eligible services and, therefore, are eligible for E-rate universal service support.<sup>25</sup>

### III. DISCUSSION

7. We have reviewed the underlying record and conclude that Providence School's Funding Year 2005 application should be remanded to USAC. As discussed above, USAC found that the requested service sought by Providence School for basic maintenance of internal connections was not being used in accordance with the Commission's rules.<sup>26</sup> USAC based its determination on language in UNICOM and SSC's responses to Providence School's RFP indicating that they would be providing monitoring and network configuration management which go beyond basic maintenance.<sup>27</sup> Both UNICOM and SSC, however, maintain that network monitoring and configuration management are not part of their basic maintenance contracts and that they accidentally recycled proposals from the previous year without deleting the inapplicable terms.<sup>28</sup> Additionally, the tasks of network monitoring and configuration management were not included in the detailed description of work to be performed by UNICOM and SSC as part of their responses to Providence School's RFP.<sup>29</sup> Because it appears as though there is inconsistent language in the responses provided by UNICOM and SSC in response to Providence School's RFP regarding the specific work to be provided to Providence School, we find that USAC should have contacted Providence School to inquire specifically as to what work was actually being performed. Had USAC done so, Providence School would have had the opportunity, at that time, to provide additional documentation of the scope of work to be provided by UNICOM and SSC.

8. In other instances where USAC denied requests for funding without sufficiently examining whether the Commission's rules were violated, the Commission has remanded the application to USAC for further consideration.<sup>30</sup> We believe that such action is also appropriate here. In remanding this matter to USAC, we make no findings as to the ultimate eligibility of the requested services.<sup>31</sup> While USAC may ultimately find that Providence School's contracts with UNICOM and SSC go beyond basic maintenance, we find that USAC does not yet have enough information to make that determination. We therefore grant Providence School's Request for Review and remand its application to USAC with instructions for USAC to reconsider the Providence School's Funding Year 2005 application, and to conduct outreach to determine whether Providence School's contracts with UNICOM and SSC are outside the scope of what

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<sup>25</sup> See Request for Review at 2.

<sup>26</sup> *Supra* para. 1.

<sup>27</sup> *Supra* para. 5.

<sup>28</sup> See UNICOM Letter; SSC Letter.

<sup>29</sup> See Request for Review at 2 and Attachments 2 and 3.

<sup>30</sup> See *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, et al., Schools and Libraries Universal Service Support Mechanism*, File No. SLD-418938, et al., CC Docket No. 02-6, Order, FCC 06-55 (rel. May 19, 2006).

<sup>31</sup> 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. We also emphasize that our actions taken in this Order will not affect the overall federal Universal Service Fund, because the monies needed to fund Providence School's appeal have already been collected and held in reserve. We note that USAC has already reserved approximately \$530 million to fund outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2006, dated January 31, 2006. Thus, we determine that the action we take today should have minimal effect on the Fund as a whole.

constitutes eligible Basic Maintenance of Internal Connections as provided in the Commission's *Universal Service Order* and *Schools and Libraries Third Report and Order*.<sup>32</sup> USAC shall complete its review of the underlying application within 90 days from the release of this Order and issue an award or denial based on a complete review and analysis.

#### IV. ORDERING CLAUSES

9. 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, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the Request for Review filed by Providence Public School District IS GRANTED to the extent provided herein.

10. 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, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the Request for Review filed by Providence Public School District IS 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, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), USAC SHALL complete its review of this application and ISSUE an award or denial based on a complete review and analysis no later than 90 days from release of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau

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<sup>32</sup> See *supra* para. 3.