

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

In the Matter of)	
)	
Request for Review of a Decision of the Universal Service Administrator by)	
)	
Gayville-Volin School District 63-1 Gayville, South Dakota)	File No. SLD-471545
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: August 18, 2006

Released: August 18, 2006

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, we grant a request by Gayville-Volin School District 63-1 (Gayville-Volin) for review of a decision by the Universal Service Administrative Company (USAC) denying an application for discounted services under the schools and libraries universal service support mechanism (E-rate program) for Funding year (FY) 2005.¹ The application was denied because the contract date on the agreement did not accompany the signature lines of both Gayville-Volin and its service provider. We find that Gayville-Volin did not violate section 54.504(c) of the Commission's rules, which states that an applicant for schools and libraries funding must have a legally binding agreement in place when it submits its FCC Form 471.² We remand the appeal to USAC for action consistent with this Order, and, to ensure that it is resolved expeditiously, we direct USAC to reinstate the funding commitment no later than 90 days from release of this Order.

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.³ The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission's rules, an applicant must file with USAC, for posting to USAC's website, an FCC Form 470 requesting discounted services.⁵ The

¹ Letter from Jason Selchert, Gayville-Volin School District 63-1, to Federal Communications Commission, dated May, 1, 2006 (Request for Review). In this order, we use the term "appeal" to refer generally to a request for review of a decision issued by USAC. 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). Funding Year 2005 started on July 1, 2005 and ended on June 30, 2006.

² 47 C.F.R. § 54.504(c).

³ 47 C.F.R. §§ 54.501-54.503.

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ 47 C.F.R. § 54.504(b). *See also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

applicant must then wait 28 days before entering into an agreement with a service provider for the requested services.⁶ Once the school or library has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of the funds needed to cover the discounts to be given for eligible services.⁷ The Commission's rules state that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."⁸ Specifically, the instructions state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered.⁹

3. Gayville-Volin has requested review of USAC's decision to deny funding for its Funding Year 2005 application.¹⁰ During selective review, USAC found that while the agreement between Gayville-Volin and the service provider was signed, it was not dated by both parties.¹¹ USAC subsequently denied Gayville-Volin E-rate funding stating that Gayville-Volin did not provide evidence with its appeal that, at the time it signed the FCC Form 471, it had a signed and dated contract in place for eligible services.¹²

4. In its Request for Review, Gayville-Volin argues that the effective date of the service agreement was February 10, 2005.¹³ Gayville-Volin states that the effective date of the agreement was clearly printed above the signature lines and the contract did not include a space for handwritten dates.¹⁴ Additionally, Gayville-Volin provided a copy of the school board meeting minutes on February 10, 2005 to further demonstrate that both parties signed the contract on that date.¹⁵ Gayville-Volin filed its FCC Form 471 on February 15, 2005. Therefore, Gayville-Volin argues that USAC incorrectly denied funding because Gayville-Volin and its service provider entered into a valid legal agreement six days prior to filing its FCC Form 471.¹⁶

⁶ 47 C.F.R. § 54.504(b)(4). Applicants can enter into agreements of any length, as long as all providers have had the opportunity to compete for the same multi-year contract. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10 (1999).

⁷ 47 C.F.R. § 54.504(c). See *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (November 2004) (FCC Form 471).

⁸ *Id.* See also *Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003) (*Waldwick Order*); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002).

⁹ *Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (November 2004) (FCC Form 471 Instructions).

¹⁰ See Request for Review at 1.

¹¹ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jason Selchert, Gayville-Volin School District, dated March 16, 2006, at 1 (Administrator's Decision on Appeal).

¹² *Id.* at 2.

¹³ See Request for Review at 1.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 1. See also FCC Form 471, Gayville-Volin School District, certified February 15, 2005.

5. Consistent with precedent, we grant Gayville-Volin's appeal of the decision by USAC to rescind funding for discounted services under the E-rate program.¹⁷ Based on the evidence submitted on appeal, we find that Gayville-Volin had a legally binding agreement in place when submitting its FCC Form 471. We have no reason to doubt that the contract was signed as of the effective date of the agreement. Accordingly, we find that good cause exists to grant Gayville-Volin's appeal and remand to USAC for further processing consistent with our decision.

6. 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 Request for Review filed by Gayville-Volin School District 63-1, Gayville, South Dakota IS GRANTED and IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

7. 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), USAC SHALL COMPLETE its review of the remanded application and ISSUE an award or denial based on a complete review and analysis the funding commitment no later than 90 calendar days from release of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Deputy Chief
Wireline Competition Bureau

¹⁷ See *Request for Review of Richmond County School District, Schools and Libraries Universal Service Support Mechanisms*, File Nos. SLD-451211, 452514, 464649, CC Docket No. 02-6, Order, DA 06-1265 (Wireline Comp. Bur. rel. June 13, 2006).