

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

In the Matter of
Appeal of the Decision
of the Universal Service Administrator
Zapata County Independent School District
Zapata, Texas
Schools and Libraries Universal Service Support
Mechanism
File No. SLD-484065
CC Docket No. 02-6

ORDER

Adopted: August 18, 2006

Released: August 18, 2006

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request for review of Zapata County Independent School District, Zapata, Texas (Zapata County), 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 Zapata County failed to respond to USAC's request for information within the USAC-specified time frame. As explained below, we find good cause to remand the underlying application associated with this appeal to USAC for further action consistent with this Order. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application, and issue an award or denial based upon a complete review and analysis, no later than 90 days from the release 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. Applications for discounted services are scrutinized to ensure that only eligible services are funded, and such scrutiny may result in requests by USAC for additional information from applicants. Absent such additional information, applications may be denied for failure to demonstrate that the services in question are eligible for support.

3. Given the enormous volume of applications and other submissions that USAC processes and

1 Letter from Norma Sarcie, Zapata County Independent School District, to Federal Communications Commission, filed Mar. 30, 2006 (Request for Review). 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.

reviews each year, it is necessary for USAC to establish measures to ensure prompt resolution of applications. One such measure in place is an administrative procedure permitting USAC to request 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, Zapata County filed an application seeking funding for a total of approximately \$2.2 million in services.<sup>5</sup> On September 15, 2005, USAC faxed Zapata County a request for additional documentation as part of a “selective review,” to which Zapata County never responded.<sup>6</sup> On September 23, 2005, USAC sent another request to Zapata County,<sup>7</sup> to which again Zapata County never responded. USAC denied Zapata County’s funding requests because it did not provide sufficient documentation to determine the eligibility of the requested items.<sup>8</sup>

5. After its funding was denied, Zapata County filed an appeal with USAC.<sup>9</sup> Zapata County states that the Technology Facilitator, Gilberto Flores, was on leave of absence due to military deployment to Iraq during the Program Integrity Assurance (PIA) Review.<sup>10</sup> After its appeal with USAC was denied, Zapata County filed an appeal with the Commission.<sup>11</sup>

---

<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 Zapata County’s FCC Form 471 application 484065, filed Feb. 18, 2005.

<sup>6</sup> See Facsimile from Michael Finkelstein, USAC, to Jorge Montes III, Zapata County Independent School District, dated Sept. 15, 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 Facsimile from Michael Finkelstein, USAC, to Jorge Montes III, Zapata County Independent School District, dated Sept. 23, 2005 (E-rate Selective Review Information Second Request).

<sup>8</sup> See Letters from Schools and Libraries Division, Universal Service Administrative Company, to Jorge Montes III, Zapata County Independent School District, dated Oct. 26, 2005 (Funding Commitment Decision Letter).

<sup>9</sup> Letter of Appeal from Romeo Rodriguez, Zapata County Independent School District, to USAC, dated Dec. 6, 2005 (USAC Letter of Appeal).

<sup>10</sup> See USAC Letter of Appeal at 2. Zapata County states that Mr. Flores’ experience and familiarity with the E-rate program were not available to the district while he was deployed. *Id.*

<sup>11</sup> See Request for Review.

### III. DISCUSSION

6. In this Order, we grant Zapata County's request for review and remand the underlying application 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. In *Greenfield Public School District*, the Bureau found that it would have been difficult for the school district to respond to USAC's requests for information given that the district's technology coordinator had been called up for active military duty.<sup>12</sup> Similarly, Zapata County's Technology Facilitator was called to active duty by the United States military during the application and review process for E-Rate Funding Year 2005.<sup>13</sup> It was during this time that Zapata County failed to respond to SLD's requests for additional information to support its application. Therefore, as we found in *Greenfield Public School District*, given the importance of military service during a time of war, we find that it would be inconsistent with the public interest to penalize Zapata County for its employee's departure to fulfill his military obligations.<sup>14</sup> Importantly, this appeal also involves a procedural error and 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 this application is not warranted.<sup>15</sup>

7. Furthermore, it appears that Zapata County may have provided the information in question when it filed its appeal with USAC.<sup>16</sup> While we do not make a finding here as to whether Zapata County has provided all requested relevant Item 21 Attachments, we find that USAC should review the information in its possession to ensure that it actually requires additional information from Zapata County to process its application. 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>17</sup> As such, we direct USAC to work with Zapata County to resolve any remaining issues related to this application. If, after conducting this review, USAC still believes that additional information is required of Zapata County in order to make an informed decision on this application, USAC shall so inform Zapata County and Zapata County shall be offered a reasonable opportunity to provide the additional information.

8. To ensure this issue is resolved expeditiously, we direct USAC to complete its review of Zapata County's 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. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines are necessary for the efficient administration of the 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>18</sup> In addition, this decision is not intended to

---

<sup>12</sup> See also, *Request for Waiver by Greenfield Public School District*, File Nos. SLD-431911 and 431129, CC Docket No. 02-6, Order, 21 FCC Rcd 2122, (rel. Feb. 28, 2006) (*Greenfield Public School District*).

<sup>13</sup> Funding Year 2005 started on July 1, 2005 and ended on June 30, 2006.

<sup>14</sup> *Id.* at para. 6.

<sup>15</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>16</sup> USAC Letter of Appeal at Attach.

<sup>17</sup> *Bishop Perry Middle School*, 21 FCC Rcd at 5326, paras. 23-24.

<sup>18</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*

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 Zapata County Independent School District, Zapata, Texas, 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Deputy Chief  
Wireline Competition Bureau