

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of the
Decision of the
Universal Service Administrator by
Coahoma County School District
Clarksdale, Mississippi
Schools and Libraries Universal Service
Support Mechanism
File No SLD-427024, 428178, 428366,
428396
CC Docket No. 02-6

ORDER

Adopted: December 4, 2006

Released: December 4, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a Request for Review filed by Coahoma County School District, Clarksdale, Mississippi (Coahoma). Coahoma seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) denying Coahoma's Funding Year 2004 application on the grounds that failed to establish that it had the necessary resources required to make effective use of the requested discounts for eligible services. We grant the Request for Review to the extent described herein and remand the matter to USAC to take appropriate action consistent with this decision. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or a denial based on a complete review and analysis no later than 90 days from release of this Order.

II. BACKGROUND

2. Pursuant to Commission rules, applicants requesting funding under the schools and libraries program must demonstrate during the application process that they possess the necessary resources to make effective use of the requested discounts. On the FCC Form 471, applicants are

1 Letter from Anthony Dixon, Coahoma County School District, to Federal Communications Commission, filed Sept. 28, 2005 (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 Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anthony Dixon, Coahoma County School District, dated Aug. 4, 2005 (Administrator's Decision).

3 See 47 C.F.R. § 54.504.

required to certify that they meet the eligibility requirements for receiving discounted telecommunications services.<sup>4</sup> Specifically, applicants must certify that “[a]ll of the necessary funding in the current funding year has been budgeted and approved to pay for the “non-discount” portion of requested connections and services as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively.”<sup>5</sup> USAC conducts its Selective Review process to determine, among other things, whether applicants have satisfied the necessary resources requirement.<sup>6</sup> USAC solicits information from applicants to determine whether the budget and supporting documentation must demonstrate that the entity had actually secured, at the time it submitted its application, all the funds necessary to pay its non-discount portion of the eligible telecommunications services contained in its application.<sup>7</sup> If USAC does not receive documentation during the review process demonstrating that the applicant has the necessary resources to pay the non-discount portion, the budget is considered to be deficient. Under such circumstances, USAC concludes that the applicant lacks the necessary resources to pay its non-discount portion as required under the Commission’s rules.<sup>8</sup> If USAC identifies problems with the budget or other initial documentation submitted by the applicant to demonstrate ability to pay its non-discount share, USAC contacts the applicant and provides an opportunity for the applicant to remedy the problem. USAC delivers a set of detailed instructions that explain the types of documentation that are acceptable. USAC routinely offers applicants the opportunity to clarify information as well as seek extensions. The Wireline Competition Bureau (Bureau) has supported this practice, stating that “[it] leave[s] to USAC’s reasonable discretion whether further contacts should be made, considering such factors as whether the remaining problem is relatively simple or involves a small amount, the attempts made by USAC previously, and the responses to previous inquiries.”<sup>9</sup>

3. In addition, in *United Talmudical Academy I*, the Commission concluded that the obligation to have the necessary resources review is an “integral part of the USAC’s responsibility for reviewing funding applications to ensure compliance with statutory requirements and Commission

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<sup>4</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

<sup>5</sup> See FCC Form 471. See also 47 C.F.R. § 54.504.

<sup>6</sup> SLD selects some applications for Selective Review to ensure that certain FCC program rules are followed. Applications are reviewed to examine compliance with the following: 1) competitive bidding process, 2) necessary resources certification; 3) endowment qualifications; and 4) consortia qualifications. See Schools and Libraries website regarding the Selective Review process, <http://www.universalservice.org/sl/applicants/step08/>.

<sup>7</sup> *Id.* With respect to demonstrating necessary resources, the requisite documentation includes: (1) a copy of the operating or facilities budget for the appropriate school year that clearly indicates which accounts will cover the non-discount payment; (2) a draft budget with signed letter from a school or library official; (3) a resolution of a governing board authorizing the filing of the FCC Form 471 for a given dollar amount with a signed letter from a school or library official; and (4) if donor funds are a source of financing the non-discount portion, a signed commitment letter from a donor with specific information regarding the donation and its use for the schools and libraries universal service support program. See Schools and Libraries website regarding instructions for completing the Selective Review for necessary resources, <http://www.sl.universalservice.org/data/pdf/MegaFax.pdf>.

<sup>8</sup> See *Beginning With Children*, 18 FCC Rcd at 940, para. 9; 47 C.F.R. § 54.504.

<sup>9</sup> See *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) (*Beginning With Children*).

rules.”<sup>10</sup> Since *United Talmudical Academy I*, we have affirmed USAC’s review requirements in order to protect the integrity of the review process determination.<sup>11</sup>

4. USAC denied funding on the ground that Coahoma failed to establish that it had the necessary resources required to make effective use of the requested discounts for eligible services.<sup>12</sup> During the application process, USAC contacted Coahoma asking for specific additional information, including details of its operating budget.<sup>13</sup> Coahoma submitted a copy of its 2004-2005 budget.<sup>14</sup> USAC requested clarification concerning a revenue source in the budget and Coahoma responded to USAC’s request.<sup>15</sup> Upon reviewing the information submitted by Coahoma, USAC determined that, at the time the FCC Form 471 was submitted, the funding requests were not supported by sufficient documentation to demonstrate that Coahoma had access to sufficient financial resources.<sup>16</sup> USAC, therefore, denied Coahoma’s funding requests citing the Commission’s rule that applicants must demonstrate that they possess the necessary resources to make effective use of the requested discounts.<sup>17</sup> Coahoma appealed to USAC, stating that the budget information it submitted demonstrated that it possessed adequate funds to support its non-discount payment.<sup>18</sup> As part of its appeal, Coahoma submitted new information regarding

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<sup>10</sup> See *Request for Review by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-105791, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 423, 430, para. 14 (2000) (*United Talmudical Academy I*). See *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) (*Beginning With Children*).

<sup>11</sup> See *Request for Review by Bethlehem Temple Christian School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*; File No. SLD-119643, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 7757, 7759, para. 3 (Com. Car. Bur. 2001); *Request for Review by New Orleans Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File Nos. SLD-201456, 201463, 201409, 201449 and 201493, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 16653, 16658, para. 12 (Com. Car. Bur. 2001). See also *Application for Review by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*; File No. SLD-105791, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 22785, 22787, para. 5 (2003) (*United Talmudical Academy II*).

<sup>12</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anthony Dixon, Coahoma County School District, dated Aug. 4, 2005 (Administrator’s Decision).

<sup>13</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anthony Dixon, Coahoma County School District, dated July 13, 2004 (Selective Review Request).

<sup>14</sup> See Letter from Anthony Dixon, Coahoma County School District, to Schools and Libraries Division, Universal Service Administrative Company, dated Aug. 4, 2004 (Selective Review Response).

<sup>15</sup> See E-mail from Schools and Libraries Division, Universal Service Administrative Company, to Anthony Dixon, Coahoma County School District, dated Jan. 27, 2005. See Selective Review Response.

<sup>16</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anthony Dixon, Coahoma County School District, dated March 24, 2005 (Funding Commitment Decision Letter).

<sup>17</sup> *Id.*

<sup>18</sup> See Letter from Anthony Dixon, Coahoma County School District, to Schools and Libraries Division, Universal Service Administrative Company, dated May 17, 2005 (SLD Appeal).

the source of revenue for the 2004-2005 budget and also revised previous submissions.<sup>19</sup> USAC rejected the new information, explaining that part of the revenue source that was identified during the application review process was not secured at the time Coahoma submitted its FCC Form 471.<sup>20</sup> Coahoma then filed the instant Request for Review, stating that it submitted adequate documentation to demonstrate its ability to pay its non-discount portion and that the *Fayette County* decision should be applied to the instant matter.<sup>21</sup>

### III. DISCUSSION

5. We find that, in this case, Coahoma was not given the opportunity to demonstrate that it had adequate resources for payment of the non-discount portion of the requested services.<sup>22</sup> As part of the selective review process, USAC contacted Coahoma numerous times, asking Coahoma to demonstrate that it possessed the necessary resources required to make effective use of the funding discounts.<sup>23</sup> In response to the request for necessary resources documentation, Coahoma submitted a copy of its 2004-2005 budget that included as revenue \$60,000 as “Unrestricted Grants In-Aid Through State.”<sup>24</sup> Coahoma explained that the money represented “projected e-rate reimbursements” from the schools and libraries program.<sup>25</sup> In order to clarify the source of reimbursements, USAC asked Coahoma to explain: (1) whether e-rate reimbursements were from the current year (2004-2005) or a previous year; (2) whether the monies had been received; and (3) the specific amount of the reimbursements that would be used to pay Coahoma’s non-discount portion.<sup>26</sup> Coahoma responded that “this projected \$60,000 is estimated for this year but it’s based on the amount of reimbursement we received last year.”<sup>27</sup> Based on this answer and with no further request for clarification, USAC denied Coahoma’s application.

6. However, upon review of this answer, we find that Coahoma’s response was not sufficiently clear for USAC to conclusively determine whether Coahoma was including monies that USAC had previously reimbursed to the school district for Funding Year 2003 or whether the monies were from future e-rate reimbursements for Funding Year 2004 that had not been received. It is not evident from this response whether Coahoma’s estimate was for monies received or anticipated to be received in 2003 or 2004 from previous funding years, or related to an anticipated reimbursement for Funding Year 2004.<sup>28</sup> We disagree with USAC’s determination that the budget information provided by

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<sup>19</sup> See SLD Appeal at 2-3.

<sup>20</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anthony Dixon, Coahoma County School District, dated Aug. 4, 2005 (Administrator’s Decision).

<sup>21</sup> See Request for Review at 7-11.

<sup>22</sup> See Administrator’s Decision at 2.

<sup>23</sup> See Selective Review Request at 4-5.

<sup>24</sup> See Selective Review Response.

<sup>25</sup> *Id.*

<sup>26</sup> See E-mail from Schools and Libraries Division, Universal Service Administrative Company, to Anthony Dixon, Coahoma County School District, dated Jan. 27, 2005.

<sup>27</sup> See E-mail from Anthony Dixon, Coahoma County School District, to Schools and Libraries Division, Universal Service Administrative Company, dated Jan. 27, 2005.

<sup>28</sup> SLD believed that Coahoma was applying for discounts and seeking to use funds from an unapproved application to pay its non-discount portion. Such practice is inconsistent with Section 54.504 of the Commissions rules. See 47

Coahoma was not sufficient and did not demonstrate that monies had been secured at the time the application was submitted to USAC. USAC should have further questioned Coahoma to clearly determine the funding year source for the monies Coahoma sought to use to satisfy the necessary resources requirement.

7. In the *Beginning With Children Order*, the Bureau determined that USAC had “reasonable discretion” to determine whether further contact with applicants is needed during selective review.<sup>29</sup> Here, USAC received documentation in response to its selective review inquiry that was not clear. USAC exercised its discretion to further inquire with Coahoma in order to clarify its responses. We find, however, that USAC did not elicit a response from Coahoma that allowed it to conclusively determine whether the documentation Coahoma submitted was adequate to satisfy the necessary resources requirement. We therefore grant the Request for Review and remand the matter to USAC to take appropriate action consistent with this decision.

8. We find that there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. 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. Although we grant the requests for waiver addressed here, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with 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 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 that we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. 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

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 C.F.R. §§ 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 Coahoma County School District, Clarksdale, Mississippi, IS GRANTED, and REMANDED to USAC for further consideration in accordance with the terms of this Order.

10. IT IS FURTHER ORDERED, pursuant to the authority delegated under sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 C.F.R. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, that USAC SHALL COMPLETE its review of the application associated with the Request for Review filed by Coahoma County School District and ISSUE an award or denial based on a complete review and analysis no later than 90 calendar days from release of this Order.

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C.F.R. § 54.504. In addition, reimbursements from the schools and libraries program that have not been distributed to the applicant, may not be used to demonstrate that the applicant possesses necessary resources to pay the non-discount portion. *See* FCC Form 471. *See also* 47 C.F.R. § 54.504.

<sup>29</sup> *See Beginning With Children*, 18 FCC Rcd 940, at para. 11.

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

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau