

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the
Universal Service Administrator by
Dallas Independent School District
Dallas, TX
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-400939
CC Docket No. 02-6

ORDER

Adopted: December 12, 2006

Released: December 12, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request for review by Dallas Independent School District (Dallas) of a decision by the Universal Service Administrative Company (USAC) denying an application for discounted services for Funding Year 2004 under the schools and libraries universal service support mechanism (also known as the E-rate program). We find that Dallas 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. Accordingly, we remand the appeal to USAC for action consistent with this Order and direct USAC to complete its review of the remanded application expeditiously.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that includes eligible schools or libraries may apply for discounts for approved telecommunications services, Internet access, and internal connections. The Commission's rules provide that each funding year, with one limited exception for existing, binding contracts, an eligible school, library, or consortium must seek competitive bids for all services eligible for support. In accordance with the Commission's rules, an applicant must

1 Letter from Michael Hinojosa, Dallas Independent School District, to the Federal Communications Commission, filed Sept. 29, 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 Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

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). Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, File No. SLD-164612, Order, 17 FCC Rcd 22,154 (Wireline Comp. Bur 2002), citing Federal-State Joint Board on Universal Service, Order, 15 FCC Rcd 6732, 6736, para. 10 (Com. Car. Bur. 1999) (school may sign with providers contracts that include renewal options and may exercise those options without

file with USAC, for posting to USAC's website, an FCC Form 470 requesting discounted services.<sup>5</sup> The applicant must then wait 28 days after the FCC Form 470 is posted to the USAC website or after public availability of the applicant's request for proposal, whichever is later, before entering into an agreement with a service provider for the requested services.<sup>6</sup> Once the school or library has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service provider(s) with which the applicant has entered into an agreement, and an estimate of the funds needed to cover the discounts to be given for eligible services.<sup>7</sup> 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."<sup>8</sup> Specifically, the FCC Form 471 instructions state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered.<sup>9</sup>

3. USAC denied Dallas's E-rate support for Funding Year 2004 for failure to have a signed contract in place at the time Dallas submitted its FCC Form 471.<sup>10</sup> Dallas filed its 2004 FCC Form 470 for telecommunications services, Internet access, and internal connections on December 23, 2003.<sup>11</sup> On January 29, 2004, the school board approved an extension of a pre-existing contract with a consortium of vendors for telecommunications services and Internet access pursuant to the terms of the agreement.<sup>12</sup> Although the school board formally voted on the extension of the contract, it did not draft and sign a new agreement with its service providers.<sup>13</sup> On February 3, 2004, Dallas filed an FCC Form 471 for Funding Year 2004 for the services approved by the board.<sup>14</sup> On February 8, 2005, USAC notified Dallas that it was rescinding funding due to the fact that Dallas did not have a contract or a legally binding agreement

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additional posting as long as all providers had the opportunity to compete for the same contract initially. If existing contract was not previously posted, school may renew if it posts its request and carefully considers all bids received.)

<sup>5</sup> 47 C.F.R. § 54.504(b). *See* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (FCC Form 470).

<sup>6</sup> 47 C.F.R. § 54.504(b)(4).

<sup>7</sup> 47 C.F.R. § 54.504(c). *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) (FCC Form 471).

<sup>8</sup> 47 C.F.R. § 54.504(c). *See also* Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003); Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanism, File No. SLD-234540, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002).

<sup>9</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 2002) (FCC Form 471 Instructions) at 19.

<sup>10</sup> *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Al Lopez, Dallas Independent School District, dated February 8, 2005 (Funding Commitment Decision Letter).

<sup>11</sup> *See* FCC Form 470, Dallas Independent School District, posted Dec. 23, 2003.

<sup>12</sup> *See* Request for Review, Attach. D (Dallas Board of Trustees Agenda Item, dated January 29, 2004) page 2, section 3. *See also* Request for Review, Attach. C (Master Agreement for Products and Services Between Dallas Independent School District and The Consortium, dated January 31, 2003) (Master Agreement).

<sup>13</sup> Request for Review, Attach. F (Dallas Letter to USAC on May 4, 2004 notice of contract extension) page 1, and Attachment H (Letter to Service Provider on January 22, 2004 notice of contract extension) page 1.

<sup>14</sup> *See* FCC Form 471, Dallas Independent School District, filed February 27, 2004.

in place at the time its 2004 FCC Form 471 was submitted to USAC.<sup>15</sup> On appeal, USAC affirmed its finding that the action by the school board alone, without a signed contract, did not constitute a legally binding agreement.<sup>16</sup> On September 27, 2005, Dallas filed the Request for Review with the Commission.<sup>17</sup> In its Request for Review, Dallas argues that the school board's approval of the contract extension formed a legally binding agreement between the school district and the service provider.<sup>18</sup>

### III. DISCUSSION

4. Based on the facts and the circumstances in the record, we find that Dallas had a contract in place at the time it filed its 2004 FCC Form 471. The terms of the original signed agreement, as reflected in the relevant 2004 FCC Form 470, contained a provision for an optional two-year extension that was executed by the Dallas school board pursuant to the terms of the agreement, Texas procurement laws, and school district policy.<sup>19</sup> Therefore, Dallas did not need to sign a new contract with its service providers before submitting its FCC Form 471. Accordingly, we remand this appeal to USAC for further processing consistent with our decision.

5. Nothing in this order should be construed as a determination that Dallas is entitled to payment of its E-rate support for Funding Year 2004. Rather, in this order, we merely hold that Dallas's E-rate support for Funding Year 2004 was improperly denied on the ground that Dallas did not have a signed contract in place. We take no position in this order on whether Dallas's E-rate support for Funding Year 2004 is subject to denial for some other reason.

6. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate universal service mechanism are used for appropriate purposes.<sup>20</sup> Our action here in no way affects 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 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 whether waste, fraud, or abuse of program funds occurred and whether 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.

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<sup>15</sup> See Funding Commitment Decision Letter.

<sup>16</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ruben Bohuchot, Dallas Independent School District, dated July 29, 2005 (Administrator's Decision on Appeal).

<sup>17</sup> See Request for Review at 1.

<sup>18</sup> See *id.* at 2.

<sup>19</sup> See *id.* at 2-4.

<sup>20</sup> See *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, 5316-17, para. 2 (2006) (*Bishop Perry Order*).

**IV. ORDERING CLAUSES**

7. 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 Dallas Independent School District IS GRANTED, and the application is REMANDED to USAC for further consideration in accordance with the terms of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau