

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

In the Matter of	)	
	)	
Requests for Review of the Decision of the Universal Service Administrator by	)	
	)	
Pasadena Unified School District	)	File Nos. SLD-399355, 408239,
Pasadena, California	)	408707, 415257
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6

**ORDER**

**Adopted: February 28, 2006**

**Released: February 28, 2006**

By the Chief, Wireline Competition Bureau:

1. Pasadena Unified School District, Pasadena, California (Pasadena), filed Requests for Review<sup>1</sup> of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC).<sup>2</sup> The SLD decisions denied funding for discounted services for Funding Year 2004 under the schools and libraries universal service mechanism. For the reasons set forth below, we grant Pasadena's appeal and remand its application to USAC for action consistent with this Order.

2. Under the schools and libraries universal service support mechanism, 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>3</sup> 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.<sup>4</sup> In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an

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<sup>1</sup> Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to Federal Communications Commission, dated September 13, 2005 (Request for Review for File No. SLD-399355); Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to Federal Communications Commission, dated September 14, 2005 (Request for Review for File No. SLD-408239); Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to Federal Communications Commission, dated September 13, 2005 (Request for Review for File No. SLD-408708); Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to Federal Communications Commission, dated September 14, 2005 (Request for Review for File No. SLD-415257) (collectively, Requests for Review).

<sup>2</sup> 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>3</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

FCC Form 470 requesting discounted services.<sup>5</sup> The applicant must then wait 28 days before entering into an agreement with a service provider for the requested services.<sup>6</sup> The earliest date an applicant can sign a contract for services after the 28-day waiting period is referred to as the allowable contract date. 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 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.<sup>7</sup>

3. The Commission's rules specifically state that an applicant shall submit the FCC Form 471 "upon signing a contract for eligible services."<sup>8</sup> There are two exceptions, however. If the services are tariffed or month-to-month, a signed contract is unnecessary under program rules; applicants can instead submit copies of their standard monthly bills as proof that they have binding, legal arrangements with service providers.<sup>9</sup> In addition, the FCC Form 471 instructions state that if services are provided on a month-to-month basis, the applicant should indicate that such a situation exists by filling in the abbreviation "MTM" in Item 15 of the FCC Form 471.<sup>10</sup>

4. Under program rules, applicants may purchase eligible services from "master contracts" negotiated by a third party such as a governmental entity.<sup>11</sup> The third party initiating the master contract must comply with the Commission's competitive bidding requirements and state procurement laws.<sup>12</sup> The applicant is not required to satisfy the competitive bidding requirements if it takes service from a master contract that either has been competitively bid or qualifies for the existing contract exemption.<sup>13</sup>

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<sup>5</sup> 47 C.F.R. § 54.504(b). *See also* 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)-(c). *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) (FCC Form 471).

<sup>7</sup> 47 C.F.R. § 54.504(c). *See* FCC Form 471. The FCC Form 471 is broken up into "blocks" that group related or interdependent requests for information, called "items," together.

<sup>8</sup> 47 C.F.R. § 54.511(c).

<sup>9</sup> Tariffed services are telecommunications services purchased at prices regulated by a state regulatory commission or the FCC for which a signed, written contract is not necessary. Month-to-month services also do not require a signed, written contract because the billing arrangement signifies that the applicant is receiving services on a month-to-month basis. *See* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 471 Instructions) at 19-20.

<sup>10</sup> *Id.*

<sup>11</sup> *See* 47 C.F.R. § 54.500(g) (defining "master contract" as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchase directly from the service provider).

<sup>12</sup> *See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997) (*Fourth Reconsideration Order*).

<sup>13</sup> *Id.* In this instance, Pasadena solicited its own competitive bids even though it was exempt from the competitive bidding requirements under the State of California's master contract.

5. In Funding Year 2000, Pasadena filed an FCC Form 470 for both month-to-month and contract services.<sup>14</sup> Pasadena executed an Authorization to Order (2000 Authorization) for what it believed to be month-to-month telecommunications and Internet services from Pacific Bell Telephone Company (now SBC) pursuant to a State of California master contract (Master Contract) in January 2000.<sup>15</sup> Under this arrangement, Pasadena has, in years prior to Funding Year 2004, received hundreds of thousands of dollars in funding from USAC.<sup>16</sup>

6. In Funding Year 2004, Pasadena again sought universal service funds for telecommunications and Internet services through the Master Contract via a new Authorization to Order (2004 Authorization).<sup>17</sup> Pasadena posted its FCC Form 470 on October 6, 2003, resulting in an allowable contract date of November 3, 2003,<sup>18</sup> and posted its FCC Forms 471 at the end of January 2004.<sup>19</sup> Pasadena listed a contract identifier in Item 15 of the FCC Forms 471 and a contract award date of January 18, 2000, both indications that Pasadena had a contract in place for the funding it was seeking.<sup>20</sup>

7. While reviewing Pasadena's Funding Year 2004 applications, USAC determined that Pasadena had not complied with the 28-day rule with regard to its contract with SBC because its contract award date was before the allowable contract date.<sup>21</sup> Although it appears that USAC, in so holding, relied on the contract date from Pasadena's 2000 Authorization, which was signed more than three years before the Funding Year 2004 allowable contract date,<sup>22</sup> USAC did not look back at the 2000 Pasadena FCC Form 470 to determine whether the services had originally been characterized as month-to-month.<sup>23</sup>

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<sup>14</sup> FCC Form 470, Pasadena Unified School District, posted October 27, 1999 (2000 Pasadena FCC Form 470).

<sup>15</sup> State of California Department of General Services, Authorization to Order Under State Agreement (2000 Authorization), at 1.

<sup>16</sup> See, e.g., USAC Data Retrieval Tool, available at <http://www.universalservice.org/sl/tools/search-tools/data-retrieval-tool.aspx>.

<sup>17</sup> State of California Department of General Services, Authorization to Order Under State Agreement (2004 Authorization), at 1.

<sup>18</sup> FCC Form 470, Pasadena Unified School District, posted October 6, 2003 (2004 Pasadena FCC Form 470).

<sup>19</sup> See FCC Form 471, Pasadena Unified School District, certified January 23, 2004 (Pasadena FCC Form 471 for File No. SLD-399355); FCC Form 471, Pasadena Unified School District, certified January 30, 2004 (Pasadena FCC Form 471 for File No. SLD-408239); FCC Form 471, Pasadena Unified School District, certified January 30, 2004 (Pasadena FCC Form 471 for File No. SLD-408707); FCC Form 471, Pasadena Unified School District, certified January 30, 2004 (Pasadena FCC Form 471 for File No. SLD-415257) (collectively, Pasadena FCC Forms 471). See also 2000 Authorization at 1.

<sup>20</sup> Pasadena FCC Forms 471. If Pasadena was seeking funding for month-to-month services, it should have placed "MTM" as the Item 15 contract identifier and left the contract award date section blank. See FCC Form 471 Instructions at 22-23.

<sup>21</sup> See, e.g., Letter from the Universal Service Administrative Company, Schools & Libraries Division, to Mike Farewell, Pasadena Unified School District, Pasadena, California, dated May 24, 2005 (Funding Commitment Decision Letter for File No. SLD-408707).

<sup>22</sup> See 2000 Authorization; Pasadena FCC Forms 471.

<sup>23</sup> In communications between the Commission and USAC on February 3, 2006, USAC admitted that the telecommunications services requested on Pasadena's 2000 FCC Form 470 "are similar to the service ordered on the contract," but did not use this information because the applicant did not reference the form in its filings.

USAC also failed to consider Pasadena's 2004 Authorization, which replaced the 2000 Authorization to Order.<sup>24</sup> USAC simply denied Pasadena's funding request, based on a surface-level application of the 28-day rule.<sup>25</sup>

8. Pasadena then filed appeals with USAC, arguing that the services in question were not under contract, but were month-to-month services.<sup>26</sup> On August 25, 2005, USAC denied Pasadena's appeals, noting that the agreement between Pasadena and SBC had all of the characteristics of a contract, and stating that the contract was signed prior to the November 3, 2003, allowable contract date.<sup>27</sup> On September 13 and 14, 2005, Pasadena filed the instant Requests for Review, again arguing that its services were month-to-month services, obtained pursuant to a state master contract, and therefore in compliance with the competitive bidding rules.<sup>28</sup>

9. For reasons explained herein, we grant Pasadena's Requests for Review. As an initial matter, we note that reasonable inquiry by USAC and better communication between USAC and the applicant could have resolved the issues that we now face in these Requests for Review. While we have previously noted that the burden of timely and accurately filing rests with the applicant, we are compelled to remind USAC that it retains an obligation to conduct a reasonable inquiry into the filings and materials that USAC itself has in its possession.<sup>29</sup>

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<sup>24</sup> Indeed, the language of the 2004 Authorization declares that "this Authorization to Order supercedes and replaces in its entirety the Authorization to Order dated January 19, 2000 issued under this agreement." 2004 Authorization at 1.

<sup>25</sup> See, e.g., Funding Commitment Decision Letter for File No. SLD-408707.

<sup>26</sup> Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to the Universal Service Administrative Company, Schools & Libraries Division, dated June 29, 2005 (Request for Appeal for File No. SLD-399355); Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to the Universal Service Administrative Company, Schools & Libraries Division, dated June 29, 2005 (Request for Appeal for File No. SLD-408239); Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to the Universal Service Administrative Company, Schools & Libraries Division, dated June 29, 2005 (Request for Appeal for File No. SLD-408708); Letter from Michael Farewell, Pasadena Unified School District, Pasadena, California, to the Universal Service Administrative Company, Schools & Libraries Division, dated June 29, 2005 (Request for Appeal for File No. SLD-415257) (collectively, Requests for Appeals).

<sup>27</sup> Letter from the Universal Service Administrative Company, Schools & Libraries Division, to Michael Farewell, Pasadena Unified School District, Pasadena, California, dated August 25, 2005 (Administrator's Decision on Appeal for File No. SLD-399355); Letter from the Universal Service Administrative Company, Schools & Libraries Division, to Michael Farewell, Pasadena Unified School District, Pasadena, California, dated August 25, 2005 (Administrator's Decision on Appeal for File No. SLD-408239); Letter from the Universal Service Administrative Company, Schools & Libraries Division, to Michael Farewell, Pasadena Unified School District, Pasadena, California, dated August 25, 2005 (Administrator's Decision on Appeal for File No. SLD-408707); Letter from the Universal Service Administrative Company, Schools & Libraries Division, to Michael Farewell, Pasadena Unified School District, Pasadena, California, dated August 25, 2005 (Administrator's Decision on Appeal for File No. SLD-415257).

<sup>28</sup> Requests for Review.

<sup>29</sup> We acknowledge that USAC, arguably, would have had to conduct further inquiry to establish the signature date of the 2004 Authorization. However, we find it inconceivable that USAC would rely on a 2000 signature date, but not the accompanying 2000 FCC Form 471, or, in the alternative, review the 2004 FCC Form 471 but ignore the possible existence of a 2004 contract, particularly when ALL of the documents necessary to sort out the confusion were, at all times during the review and appeal process, within the possession of USAC by virtue of the applicant's

10. As we have recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied.<sup>30</sup> In fact, the information provided by USAC to Pasadena in the instant case is confusing: USAC issued letters denying funding while stating, in the same letters, that the applicant's next steps included filing an FCC Form 486 and invoicing SLD, steps taken only in the instance of approval of funding.<sup>31</sup> Moreover, Pasadena reasonably relied on the fact that its funding had been approved in prior years, and that such funding requests were virtually identical to the request for Funding Year 2004.<sup>32</sup> Furthermore, the complexity of the Master Contract process in California, which requires applicants to sign an additional state authorization agreement for recurring services that appear to be offered month-to-month, should be well known to USAC, another indication that extra scrutiny was warranted in this case.

11. We do not agree with Pasadena's assertions that the services in question were month-to-month. Rather, we find that the 2004 Authorization bound the school to a five-year commitment to order services under the Master Agreement.<sup>33</sup>

12. We find, however, that the record does not support a finding that Pasadena violated the Commission's competitive bidding rules. Indeed, the record indicates that the 2004 Authorization was agreed to after the 28-day waiting period.<sup>34</sup> Moreover, we find that Pasadena, in executing the 2004 Authorization, complied in all material respects with California's state procurement law, and there is no indication in the record that California's procurement laws are inconsistent with the Commission's competitive bidding rules.<sup>35</sup> We emphasize that competitive bidding rules are a central tenet of program

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filing such documents with USAC. We cannot condone USAC's blindly relying on the burden of proof to the point of ignoring information it already has simply because the applicant fails to "refile" or reproduce it.

<sup>30</sup> *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 Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*).

<sup>31</sup> See, e.g., Funding Commitment Decision Letter for File No. SLD-408707.

<sup>32</sup> If USAC's interpretation of Pasadena's filing were correct, and Pasadena had entered into an agreement more than three years before the allowable contract date, USAC still should have more clearly communicated the problem and worked with Pasadena to determine the reason for the discrepancy, particularly in light of the fact that USAC had missed such discrepancies in previous filings. Even given its limited role and lack of discretion as to substantive matters, USAC could have at least used reasonable efforts to allow correction of what appears to be a ministerial error, rather than to threaten Pasadena Unified School District, which has several schools receiving funding at the 90-percent level, with the loss of more than \$300,000 in funding, without adequate inquiry or explanation.

<sup>33</sup> The 2004 Authorization provides that the agreement between Pasadena and SBC is in effect for "five years from the Effective Date" and that Pasadena is subject to penalty charges if it does not comply with the terms of the agreement or terminates service. See 2004 Authorization at 1, 2.

<sup>34</sup> Although the 2004 Authorization in the file does not contain signatures or signature dates, SBC did not present Pasadena with its bid until January 16, 2004. See Bid Bond of Pacific Bell Telephone Company, dba SBC DataCom, for Pasadena Unified School District, Request for Proposal 02-03/04—Next Generation IP-Based Voice, Data and Video Communications System, dated January 16, 2004.

<sup>35</sup> Pasadena's procurement process included posting its specifications on USAC's website for at least 28 days and generating a comprehensive request for proposal for prospective bidders. See Pasadena FCC Form 470; Pasadena Unified School District, Request for Proposal Number 02-03/04, Next Generation IP-Based Voice, Data and Video

funding and a tool for preventing waste, fraud and abuse, but note that there is no indication in the record that Pasadena was engaging in any activity intended to defraud or abuse the schools and library program. We note that, in light of Pasadena's reliance on USAC's prior actions, the findings in this Order also extend to the years that Pasadena was mistakenly obtaining funding for month-to-month services, even though it had a contractual arrangement with its service provider. To avoid confusion by Pasadena and USAC, and to deter waste, fraud, and abuse, we require Pasadena, in the future, to properly indicate what type of services it is seeking in Item 15 of its FCC Form 471.

13. Accordingly, for the reasons stated above, we grant Pasadena's Requests for Review and remand its applications to USAC for further action consistent with this order.

#### IV. ORDERING CLAUSE

14. 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 Requests for Review filed by Pasadena Unified School District, Pasadena, California, ARE GRANTED.

15. 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), that the Requests for Review filed by Pasadena Unified School District, Pasadena, California, ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

#### FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau

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Communications System, issued December 19, 2003. Specifically, the record demonstrates that Pasadena conducted a comprehensive procurement process, pursuant to our rules, and did not accept bids from prospective service providers until January 16, 2004, well after the allowable contract date of November 3, 2003. *See id.*