

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

In the Matter of
Request for Review of the Decision of the
Universal Service Administrator by
Tri-River Educational Computer Association
Marion, Ohio
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-394989
CC Docket 02-6

ORDER

Adopted: March 9, 2007

Released: March 9, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request for review filed by the Tri-River Educational Computer Association (TRECA) of a decision by the Universal Service Administrative Company (USAC) that denied TRECA funding from the schools and libraries universal service support mechanism because USAC determined that TRECA failed to provide evidence of its authority to represent its consortium members. We remand the underlying application to USAC for action consistent with this Order, and, to ensure that it is resolved expeditiously, we direct USAC to issue an award or a denial based on a complete review and analysis no later than 60 days from release of this Order.

II. BACKGROUND

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 connection services. 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. After an applicant has entered into

1 Request for Review of the Decision by the Universal Service Administrative Company by Tri-Rivers Educational Computer Association (TRECA), Request for Review, CC Docket No. 02-6, filed Aug. 16, 2004 (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 47 C.F.R. §§ 54.501-54.503.

3 The applicant must wait 28 days before entering into an agreement with a service provider for the requested services. 47 C.F.R. § 54.504(b); see also Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Funding Years 2000, 2001, 2002 FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (April 2002) (Funding Year 2003 FCC Form 470); Schools and Libraries Universal Service, Description (continued....)

agreements for eligible services with one or more service providers, it must file an FCC Form 471 with USAC.⁴

3. The Commission's rules allow schools and libraries to form consortia for purposes of seeking competitive bids on their service requests.⁵ Because discounts are restricted by statute to "bona fide request[s]" for services, a consortium application may only be submitted on behalf of schools and libraries that have actually authorized the consortium to make the request.⁶ By signing the FCC Form 471, the applicant is certifying that it is authorized to submit and certify to the accuracy of the application on behalf of all consortium members.⁷ USAC must ensure that the consortium members are aware of the application to be filed and how that application requires the expenditure of financial and professional resources by each member.⁸ Ensuring that a school or library is aware of and approves the application on its behalf also helps to avoid cases of duplicative requests from different applicants applying on behalf of the same school or library.⁹ In *Project Interconnect*, the Wireline Competition Bureau (the Bureau) affirmed USAC's requirement that an applicant applying as a consortium must submit a letter of agency (LOA) from each of its members expressly authorizing the applicant to submit an application on its behalf.¹⁰ Specifically, the Bureau found that this requirement is consistent with USAC's authority to implement administrative procedures that ensure compliance with the Commission's rules and

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of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (Funding Year 2004 FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (Funding Year 2005 FCC Form 470) (collectively, FCC Form 470).

⁴ The FCC Form 471 notifies USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services. 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1997) (Funding Year 1999 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Funding Year 2000 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Funding Year 2001 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (Funding Year 2002 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) (Funding Year 2004 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (Funding Year 2005 FCC Form 471) (collectively, FCC Form 471).

⁵ 47 C.F.R. § 54.501(d)(1).

⁶ 47 U.S.C. § 254(h)(1)(B).

⁷ 47 C.F.R. § 54.501(c)(1). See also USAC Website, Letter of Agency, <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (retrieved Feb. 28, 2007) (LOA Guidance); FCC Form 471, Item 33, Block 6.

⁸ *Request for Review of the Decision of the Universal Service Administrator by Project Interconnect, Brooklyn Park, Minnesota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File Nos. SLD-146858, 146854, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 13655, 13659, para. 10 (Common Car. Bur. 2001) (*Project Interconnect Order*).

⁹ *Id.*

¹⁰ *Id.* at 13658, para. 8. USAC requires an LOA to contain the following five elements: the name of the person filing the application; the name of the person authorizing the filing of the application; the specific time frame the LOA covers; the signature, date, and title of an official who is an employee of the entity who is authorizing the filing of the application; and the type of services covered by the LOA. See LOA Guidance. In certain situations, other documentation, such as evidence that each consortium member knew it was represented on the application, may be accepted as proof of authorization. *Id.*

requirements as established in the Commission's *Eighth Reconsideration Order*.¹¹ In lieu of an LOA, according to USAC's guidelines, "[c]onsortia which have a statutory or regulatory basis and for which participation by schools or libraries is mandatory" may provide "copies of the relevant state statute or regulation."¹² In Funding Year 2005, USAC began requiring applicants to obtain signed LOAs from each consortium member prior to the certification date of their FCC Form 471.¹³

4. *TRECA's Request for Review.* In Funding Year 2004 (July 1, 2004 to June 30, 2005), TRECA applied for funding for telecommunications services and Internet access on behalf of its consortium.¹⁴ TRECA is the lead member of its consortium and, as such, obtained LOAs from each of its members between September and December 2003.¹⁵ After TRECA had filed its FCC Form 471 with USAC, and after the filing window had closed on February 4, 2004, one member verbally notified TRECA it was withdrawing from the consortium.¹⁶ In mid-February 2004, USAC contacted TRECA during its Program Integrity Assurance (PIA) review process and requested copies of TRECA's signed LOAs.¹⁷ TRECA informed USAC that a member had withdrawn and TRECA would not be requesting reimbursement on its FCC Form 472 for that member.¹⁸ According to TRECA, USAC's PIA review team member agreed that only copies of LOAs for those members that would be included on its FCC Form 472 were necessary.¹⁹ Thus, on February 27, 2004, TRECA submitted to USAC the LOAs for the 34 members that would be listed on its FCC Form 472.²⁰ On June 22, 2004, however, USAC denied TRECA's entire application, stating that TRECA had failed to provide evidence of authority to file an

¹¹ See 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions). See also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96-45, 13 FCC Rcd 25058, 25075-76, paras. 30-31, 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee).

¹² See LOA Guidance.

¹³ See *id.* See also February 2005 Announcements, Sample Letter of Agency (LOA) Available (2/1/05), available at <http://www.universalservice.org/sl/tools/news-archive/2005/022005.asp#020105a> (retrieved Feb. 28, 2007).

¹⁴ Request for Review at 3. See also FCC Form 471, Tri-Rivers Educational Computer Association, filed Jan. 22, 2004.

¹⁵ Request for Review at 3. See also *id.* at Ex. B (TRECA Consortium LOAs).

¹⁶ *Id.* at 3. TRECA did not receive written notification from the member, White Hat Management, until April 2004. *Id.* White Hat Management was the management services provider for 28 Hope Academies and Lifeskills Centers that had been members of the consortium. See *id.* at Ex. B (Letter from Mark F. Thimmig, White Hat Management, LLC, to Mike Carder, TRECA Executive Director, dated April 16, 2004).

¹⁷ Request for Review at 3.

¹⁸ *Id.* at 4. The FCC Form 472 is submitted by the billed entity in order to receive reimbursement for the discounts for services already received and paid for. See Universal Service for Schools and Libraries, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (October 1998) (FCC Form 472).

¹⁹ Request for Review at 3. See also *id.* at Ex. C (E-mail correspondence between Ken Papay, TRECA, and Robert Carreon, USAC, regarding the LOAs).

²⁰ *Id.* at 4. On appeal, TRECA also provided to USAC White Hat's LOA, signed on December 31, 2003. See *id.* at Ex. B.

FCC Form 471 “on behalf of, or evidence of the authority of, a substantial number of the members included” in the consortium.²¹

5. Subsequently, on August 16, 2004, TRECA filed a Request for Review with the Commission.²² In its appeal, TRECA argues that it had the authority to apply on behalf of its consortium members.²³ TRECA also contends that it had provided to USAC proof of its authority to apply on behalf of each consortium member requesting funding.²⁴

III. DISCUSSION

6. Based on the record before us, we grant TRECA’s appeal of the decision by USAC denying E-rate funding to TRECA. USAC denied TRECA’s entire application because USAC determined that TRECA failed to provide evidence of its authority to file an FCC Form 471 on behalf of, or evidence of the membership of, a substantial number of the members included in the consortium.²⁵ The Commission recently found in its *Kan-ed Order* that to deny an entire application because more than 30 percent of a consortium’s members either did not submit an LOA or submitted a deficient LOA would unfairly penalize the entire consortium.²⁶ Here, TRECA provided valid LOAs to USAC during the PIA review process for the 34 remaining members in its consortium.²⁷ Thus, as in the *Kan-ed Order*, we find that to deny an entire application because one member withdrew would unfairly penalize the entire consortium.²⁸ Applicants may be reluctant to risk applying with a consortium if an entire application would be denied if some members withdraw. Such a result would be inconsistent with the Commission’s stated desire to “encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower rates.”²⁹

7. Accordingly, we remand the underlying application to USAC for further processing consistent with our actions in this Order. To ensure that the application is processed expeditiously, we

²¹ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kenneth R. Pappay, Tri-Rivers Educational Computer Association, dated June 22, 2004, at 5-6 (Funding Commitment Decision Letter).

²² Request for Review at 7.

²³ *Id.* at 6.

²⁴ *Id.*

²⁵ See Funding Commitment Decision Letter at 5-6.

²⁶ *Request for Waiver of the Decision of the Universal Service Administrator by Kan-ed, Kansas Board of Regents*, CC Docket No. 02-6, Order, 21 FCC Rcd 13658, 13661, para. 8 (2006) (*Kan-ed Order*).

²⁷ See Request for Review at Ex. B. TRECA notified USAC that one member of its consortium listed on its FCC Form 471, encompassing 28 schools, was withdrawing and that TRECA would not seek funding for that member. *Id.* at Ex. C (E-mail from Robert Carreon, Universal Service Administrative Company, Schools and Libraries Division, to Kenneth Pappay, TRECA, dated Feb. 27, 2004; and Letter from Kenneth Pappay, TRECA, to Universal Service Administrative Company, Schools and Libraries Division, dated Mar. 1, 2004).

²⁸ See *Kan-ed Order*, 21 FCC Rcd at 13661, para. 8; see also *Project Interconnect Order*, 16 FCC Rcd at 13661, para. 14.

²⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9027, para. 476 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (Nov. 2, 2000).

direct USAC to issue an award or a denial based on a complete review and analysis of the application no later than 60 days from release of this Order. We emphasize the limited nature of this decision. Our action here does not eliminate USAC's current procedure requiring that an applicant applying for funding on behalf of a consortium have signed LOAs in place prior to submitting an FCC Form 471 or demonstrate its authority through alternative means, such as state statute or regulation.³⁰ We continue to require E-rate applicants to submit complete and timely information to USAC as part of the application review process.

8. 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.³¹ 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.

IV. ORDERING CLAUSES

9. 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 sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that Tri-Rivers Education Computer Association's Request for Review IS GRANTED, as described herein.

10. 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 sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that Tri-Rivers Education Computer Association's Request for Review IS 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, USAC SHALL COMPLETE its review of the underlying application of Tri-Rivers Education Computer Association and ISSUE an award or a denial based on a complete review and analysis no later than 60 days from release of this Order.

³⁰ See *supra* para. 3; see also LOA Guidance.

³¹ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5327, para. 27 (2006).

12. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon
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