

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

In the Matter of)	
)	
Requests for Review of Decisions of the Universal Service Administrator by)	
)	
Joseph Jingoli & Son, Inc., Lawrence, NJ, <i>et al.</i>)	File Nos. SLD-475364, <i>et al.</i>
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: October 30, 2007

Released: October 30, 2007

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant 13 appeals of decisions 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 grounds that Petitioners sought cancellation of their funding requests.¹ We find that good cause exists to grant the requests and remand the underlying applications to USAC for further consideration consistent with this Order.² To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendix 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.³ Under USAC's procedures for the E-rate program, an applicant may voluntarily cancel or reduce funding request amounts using one of three methods.⁴ An applicant may: (1)

¹ A list of these requests for review is provided in the Appendix. 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 USAC website, Voluntary Reduction or Cancellation of Funding Request Amounts for Funding Year 2002 (Funding Year 5), <http://www.sl.universalservice.org/whatsnew/2002/042002.asp> (retrieved October 23, 2007) (USAC's Funding Request Cancellation Procedures). The instructions for voluntary reduction or cancellation of funding requests have not been revised since July 2006.

³ 47 C.F.R. §§ 54.501-54.503.

⁴ See *supra* note 2.

mark corrections on its Receipt Acknowledgment Letter (RAL);⁵ (2) officially communicate in writing to a USAC Schools and Libraries Division (SLD) Program Integrity Assurance (PIA) representative the applicant's desire to cancel or reduce its funding request (if the application is in the midst of PIA review); or (3) submit an FCC Form 500 to SLD after receiving a Funding Commitment Decision Letter (FCDL).⁶ In the Requests for Review, 13 Petitioners seek review of USAC's decisions to deny them funding from the E-rate program because USAC claims Petitioners sought to cancel their funding requests.

III. DISCUSSION

3. We grant Petitioners' requests for review. Generally, Petitioners request review of USAC's decisions to deny them E-rate funding on the grounds that Petitioners sought to cancel their funding requests. Nine Petitioners argue that they sought cancellation of their funding request in error.⁷ Two Petitioners contend that they never sought cancellation of their funding request.⁸ Two Petitioners allege that a staffing problem caused a cancellation of a funding request.⁹

4. Based on the facts and the circumstances of these specific cases, we find that good cause exists to grant Petitioners' requests for review. In these instances, the applicants did not intend to cancel their funding requests. For example, Windsor Public Schools accidentally included several FRNs that it did not want to cancel when it requested that just one other FRN be cancelled.¹⁰ The School District of Pontiac inadvertently cancelled one of its FRNs because it thought it was a duplicate FRN from a prior funding year.¹¹ Resurrection School cancelled its entire Form 471 application thinking the application only reflected the wiring services and not realizing that all the FRNs associated with the application were

⁵ Canceling or reducing a funding request by correcting the RAL is a three-step process. See USAC's Funding Request Cancellation Procedures. First, applicants must photocopy the RAL and draw a line through each funding request amount they wish to reduce or cancel, marking next to it the new funding request amount after cancellation or reduction. *Id.* Second, they must write the name of the contact person and telephone number on the first page of the marked-up RAL so the applicant can be contacted if there are questions. *Id.* Finally, applicants must make a photocopy of the marked-up RAL for their own files and mail the marked-up RAL copy to USAC's Schools and Libraries Division (SLD). *Id.*

⁶ *Id.* The FCC Form 500 Adjustment of Funding Commitment and Modification to Receipt of Service Confirmation Form is used by the billed entity applicant that filed an FCC Form 471 on behalf of an eligible school, library, library consortium or consortium of multiple entities, and that received a commitment of funds to inform SLD that it wishes to reduce the funding commitment amount on the Funding Request Number (FRN) level. See USAC website, Instructions for Completing the Universal Service for Schools and Libraries Adjustment of Funding Commitment and Modification to Receipt of Service Confirmation Form (FCC Form 500), http://www.universalservice.org/_res/documents/sl/pdf/500i.pdf (retrieved October 23, 2007). The FCC Form 500 may also be used to modify the beginning or ending date for services received during the funding year. *Id.*

⁷ See generally Request for Review by Leeds City School District; Request for Review by Nemaha Valley Schools Unified School District No. 442; Request for Review by Joseph Jingoli & Son, Inc; Request for Review by Mukwonago Area School District; Request for Review by Parkland School District; Request for Review by Resurrection School; Request for Review by School District of the City of Pontiac; Request for Review by Scott County School District R5; and Request for Review by Windsor Public Schools.

⁸ See generally Request for Review by Kearney Public Schools and Request for Review by Thomaston-Upson County Schools.

⁹ See generally Request for Review for Kickapoo Nations School and Kickapoo Tribal Council and Request for Review by Wellston School District.

¹⁰ Windsor Public School Request for Review at 3.

¹¹ School District of the City of Pontiac Request for Review at 1.

cancelled as well.¹² Petitioners generally claim that inadvertent errors or a staff change resulted in the cancellation of their funding requests. As the Commission discussed in the *Bishop Perry Order*, we do not believe that such minor mistakes warrant the rejection of these Petitioners' E-rate funding requests.¹³ As noted by the Commission, the primary jobs of most of the people filling out these forms include school and library administrators, technology coordinators, librarians and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts.¹⁴ In addition, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we emphasize that the actions taken in this Order should have minimal effect on the overall federal Universal Service Fund, because the monies needed to fund these appeals have already been collected and held in reserve.¹⁵ We therefore grant and remand the underlying applications to USAC for further consideration in accordance with the terms of this Order.¹⁶ To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release of this Order.

5. 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.¹⁷ Although we grant the appeals 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

6. 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 the 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), the Requests for Review as listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

¹² Resurrection School at 1.

¹³ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*).

¹⁴ *Id.* at 5323, para. 14.

¹⁵ We estimate that the 13 appeals granted in this Order involve approximately \$4,080,374 in funding for Funding Years 2000-2006. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2007 (dated May 2, 2007).

¹⁶ See Appendix.

¹⁷ See *Bishop Perry Order*, 21 FCC Rcd at 5320, para. 11 (finding no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements).

7. 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 the 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 listed in the Appendix and ISSUE an award or a denial of each application based on a complete review and analysis no later than 90 calendar days from the release of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Jeremy D. Marcus
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Requests for Review

Applicant	Application Number	Funding Request Number	Funding Year
Joseph Jingoli & Son, Inc. Lawrenceville, NJ	475364	1313826, 1314123	2005
Kearney Public Schools Kearney, NE	396314	1083396	2004
Kickapoo Nations School and the Kickapoo Tribal Council Horton, KS	431622	1199225, 1199263, 1199294, 1199329	2004
Leeds City School District Leeds, AL	365467	997724	2003
Mukwonago Area School District Mukwonago, WI	528805	1459438	2006
Nemaha Valley Unified School District 442 Seneca, KS	336113	912845	2003
Parkland School District Allentown, PA	337332	910699	2003
Resurrection School Jersey City, NJ	518693	1430897, 1430901, 1430908, 1430912, 1430916, 1430917, 1430921, 1430925, 1430928, 1430932, 1430937, 1430956, 1430959, 1433666, 1433670	2006
School District of the City of Pontiac Pontiac, MI	497750	1380950	2006
Scott County School District R5 Sikeston, MO	520319	1432247	2006
Thomaston-Upson County Schools Thomaston, GA	523371	1440931	2006
Wellston School District Flagler Beach, FL	484568	1343943, 1344111, 1344269, 1344339, 1344403, 1344435, 1344480, 1345361, 1345434	2005
Windsor Public Schools Windsor, CT	538782	1492509, 1492510, 1492511, 1492512, 1492513	2006