In the Matter of

Requests for Review of Decisions of the Universal Service Administrator by


Schools and Libraries Universal Service Support Mechanism CC Docket No. 02-6

ORDER


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

I. INTRODUCTION

1. In this order, we grant 21 appeals of decisions by the Universal Service Administrative Company (USAC) reducing or denying funding from the schools and libraries universal service support mechanism, also known as the E-rate program, for Funding Years 2002 and 2004-2008 on the grounds that applications failed to respond to USAC’s requests for information within the USAC-specified time frame. As explained below, in each case we find good cause to grant the appeals and remand the underlying applications associated with these appeals to USAC for further action consistent with this order. To ensure that USAC resolves the underlying applications expeditiously, we direct it 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 calendar days from the release date 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. USAC examines applications in accordance with E-rate program rules, and such scrutiny may result in requests by USAC for additional information from applicants. If the applicant fails to provide the additional information requested, USAC may deny the application. Historically,

---

1 The list of petitioners is in the Appendix. In this order, we use the term “appeals” to generically refer to requests for review of decisions issued by USAC. Section 54.719(c) of our rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).


USAC required applicants to respond to its requests for additional or clarifying information or documentation within seven days of the applicant being contacted, unless the deadline was explicitly extended by USAC. After the seven days and any extension period had passed, USAC made its funding determination based on the information it had in its possession.

3. In the Alpaugh Order, the Commission granted 78 appeals of applicants denied funding because they failed to respond to USAC’s requests for information within the USAC-specified time frame. The Commission remanded the underlying applications to USAC for review and further processing. The order also instructed USAC, beginning with applications for Funding Year 2007, to detail in writing and with specificity to the applicant the information or documentation USAC is seeking and to give applicants a 15-day deadline for responses to such requests. USAC was instructed to continue to work with applicants beyond the 15 days when the applicants were attempting in good faith to submit the necessary documentation.

III. DISCUSSION

4. We grant these 21 appeals of decisions reducing or denying requests for funding from the E-rate program and remand the underlying applications associated with these appeals to USAC for further action consistent with this order. The petitioners’ requests for funding were denied or reduced because the applicants failed to respond to USAC’s requests for information within the specified time frame. The petitioners generally argue that they did not receive USAC’s request for additional information, they submitted the information USAC requested in a timely manner, USAC never answered requests about


5 See Alpaugh Order, 22 FCC Rcd at 6036, para. 3.

6 Id. at 6036-37, para. 4.

7 Id. at 6037, para. 5.

8 Id. at 6038, para. 6. In the Alpaugh Order, the Commission also established a presumption that the applicants had received notice five days after such notice is postmarked by USAC. Id. at 6038, n. 14.

9 Id. at 6038, para. 6 n. 14.

10 See Letter from James McGuinness, on behalf of Newburgh Enlarged City School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 9, 2005); Letter from Al Spinks, on behalf of Gulf Shores Academy, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 23, 2007); Letter from Anthony Natoli, on behalf of New Horizons Academy (a/k/a New Visions Academy), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 10, 2007) (noting that it was the service provider, not the applicant); Letter from Leslie Iapicco, Palisades Park Board of Education, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 15, 2007); Letter from Jane Pitts, To’Hajiilee Community School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 30, 2007); Letter from Provida Masi, Port Carbon Public Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 1, 2008).

11 See Letter from Richard Larson, on behalf of Excellence Charter School of Bedford-Stuyvesant, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 22, 2007); Letter from Linda Clinkenbeard, Fort Gibson Public Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 23, 2007) (Fort Gibson Request for Review); Letter from Winston
what specific documentation was sought, or they lacked sufficient staff to permit them to submit the information on time.  

5. Balancing the facts and the circumstances of these specific cases as described below, we find that good cause exists to grant these appeals and remand them to USAC for further processing. Importantly, as the Commission found in the Alpaugh Order, these types of appeals involved a procedural error on the part of the petitioners, not a failure to adhere to a core program requirement or a misuse of funds. As the Commission observed in the Alpaugh Order, given that any violations that occurred were procedural, not substantive, the complete rejection of these applications is not warranted. The Commission also recognized that these appeals involve a processing deadline, not a program rule.

Although deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Communications Act of 1934, as amended, or serve the public interest.

6. We note that granting these appeals should have a minimal impact on the universal service fund because the monies needed to fund the underlying applications, should they all be fully funded, have already been collected and held in reserve. We therefore find that good cause exists to grant and remand

Himsworth, Garden City Union Free School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed July 18, 2008); Letter from Brenda Lindsey, Grady Municipal Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 11, 2007) (SLD-534639); Letter from Brenda Lindsey, Grady Municipal Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 11, 2007) (SLD-537939); Letter from Ashley Jordan, on behalf of Hayti School District R 2, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Nov. 26, 2007) (Hayti Request for Review); Letter from Winston Greenwell, New Horizons Regional Educational Centers, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 13, 2007); Letter from Jim Curtis, Portage Lake District Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 15, 2006); Letter from Theresa DePietro, Tucson Academy of Leadership and Arts, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 20, 2006); Letter from Damien Doguet, on behalf of Vineland Community Demonstration School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Apr. 6, 2007); Letter from LeeAnn Errotabere, Visalia Unified School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 20, 2006).

12 See Letter from Loraine Saffer, Southeastern BOCES, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 3, 2006).

13 See Letter from Thomas Allcock, Raymond-Knowles Union Elementary School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 9, 2007); Letter from Michelle Yazzie, St. Michaels Association for Special Education, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Jan. 2, 2008) (St. Michaels Request for Review); Letter from Walter Fox, Spring Branch Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 9, 2005); Letter from Emily Vaughn-Henry, West Contra Costa Unified School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 20, 2007).

14 See Alpaugh Order, 22 FCC Rcd at 6037, para. 5.


16 Alpaugh Order, 22 FCC Rcd at 6037, para. 5; Bishop Perry Order, 21 FCC Rcd at 5319, para. 9.


18 We estimate that the appeals granted in this order involve applications for approximately $2.5 million in funding for Funding Years 2002-2008. We note that USAC has already reserved sufficient funds to address outstanding
these appeals. For each petitioner, we direct USAC to detail in writing to the applicant the specific information or documentation it seeks from the applicant.\textsuperscript{19} USAC should then permit the petitioners to provide the information to USAC within 15 calendar days from the date of receipt of the written notice that additional information is required.\textsuperscript{20} To ensure these issues 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 date of this order.\textsuperscript{21} In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners’ applications.\textsuperscript{22} We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met.

7. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines are necessary for the efficient administration of the E-rate program. Although we grant the subject appeals before us, our action here does not eliminate USAC’s deadlines for processing applications.\textsuperscript{23} In addition, this decision is not intended to reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. We continue to require E-rate applicants to submit complete and accurate information to USAC in a timely fashion as part of the application review process.

8. Finally, we emphasize that the Commission is 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 appeals addressed here, the Commission reserves the right 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 disbursed improperly or in a manner inconsistent with the statute or the Commission’s rules. To the extent we find that funds were not used properly, the Commission will require USAC to recover such funds through its normal process. We emphasize that the Commission retains the discretion

\textsuperscript{19} See Alpaugh Order, 22 FCC Rcd at 6037-38, para. 6.

\textsuperscript{20} Id. As in the Alpaugh Order, there is a presumption that the applicant has received notice five days after the postmark date of such notice.

\textsuperscript{21} In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

\textsuperscript{22} Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

\textsuperscript{23} We note that the Commission has initiated a proceeding to address whether particular deadlines should be modified. 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, 11321, para. 29 (2005).
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. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission’s procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, 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 0.91, 0.291, 1.3, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Requests for Review listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration consistent with the terms of this order.

10. IT IS FURTHER ORDERED, 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 0.91, 0.291, 1.3, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that section 47 C.F.R. § 54.720 of the Commission’s rules, 47 C.F.R. § 54.720, IS WAIVED to the extent provided therein.

11. IT IS FURTHER ORDERED, 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 0.91, 0.291, 1.3, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that 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 release of this order.

12. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
# APPENDIX

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Application Number</th>
<th>Funding Year</th>
<th>Date Request for Review Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fort Gibson Public Schools Fort Gibson, OK</td>
<td>586371</td>
<td>2007</td>
<td>Nov. 23, 2007</td>
</tr>
<tr>
<td>Grady Municipal Schools Grady, New Mexico</td>
<td>534639, 537939</td>
<td>2006</td>
<td>Apr. 11, 2007</td>
</tr>
<tr>
<td>Joseph Jingoli &amp; Son, Inc. (Vineland Community Demonstration School)</td>
<td>522146</td>
<td>2006</td>
<td>Apr. 6, 2007</td>
</tr>
<tr>
<td>New Horizons Regional Education Centers Hampton, VA</td>
<td>564836</td>
<td>2007</td>
<td>Aug. 13, 2007</td>
</tr>
<tr>
<td>Newburgh Enlarged City School District Newburgh, NY</td>
<td>425779</td>
<td>2004</td>
<td>Jun. 9, 2005</td>
</tr>
<tr>
<td>Palisades Park Board of Education Palisades Park, NJ</td>
<td>521924</td>
<td>2006</td>
<td>Mar. 15, 2007</td>
</tr>
<tr>
<td>Port Carbon Public Library Port Carbon, PA</td>
<td>559669</td>
<td>2007</td>
<td>May 1, 2008</td>
</tr>
<tr>
<td>Portage Lake District Library Houghton, MI</td>
<td>537714, 537818</td>
<td>2006</td>
<td>Nov. 15, 2006</td>
</tr>
<tr>
<td>Raynor Services, Inc. (Gulf Shores Academy) Houston, TX</td>
<td>475236</td>
<td>2005</td>
<td>July 23, 2007</td>
</tr>
<tr>
<td>Raymond-Knowles Union Elementary School Raymond, CA</td>
<td>536960</td>
<td>2006</td>
<td>Apr. 9, 2007</td>
</tr>
<tr>
<td>Spring Branch Independent School District Houston TX</td>
<td>388996</td>
<td>2004</td>
<td>Jun. 9, 2005</td>
</tr>
<tr>
<td>To’Hajiilee Community School To’Hajiilee, NM</td>
<td>484722</td>
<td>2005</td>
<td>Apr. 30, 2007</td>
</tr>
<tr>
<td>Applicant</td>
<td>Application Number</td>
<td>Funding Year</td>
<td>Date Request for Review Filed</td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
<td>--------------------</td>
<td>--------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Visalia Unified School District Visalia, CA</td>
<td>530530</td>
<td>2006</td>
<td>Nov. 20, 2006</td>
</tr>
</tbody>
</table>