

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Liberal Unified School District 480)	File No. SLD-307357
Liberal, Kansas)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: October 30, 2008

Released: October 30, 2008

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

I. INTRODUCTION

1. In this Order, we grant a Request for Review filed by Liberal Unified School District 480, Liberal, Kansas (Liberal USD) of a decision by the Universal Service Administrative Company (USAC) under the schools and libraries universal service support mechanism (also known as the E-rate program).¹ USAC denied Liberal USD's Funding Year 2003 application after finding that Liberal USD violated the Commission's competitive bidding requirements.² We grant the Request for Review, finding that, based on the record, no competitive bidding violation occurred, and remand the matter to USAC for appropriate action consistent with this decision.³ To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or a denial based on a complete review and analysis no later than 90 days from release of this Order.⁴

¹ See Letter from Chris Webber, CRW Consulting, LLC, on behalf of Liberal Unified School District 480, to Office of the Secretary, Federal Communications Commission, ,CC Docket Nos. 96-45 and 97-21 (filed May 5, 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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Letter from Universal Service Administrative Company, Schools and Libraries Division, to Chris Webber, Liberal Unified School District (dated Apr. 13, 2004) (Administrator's Decision on Appeal). 47 C.F.R. §§ 54.504(a)-(c).

³ We estimate that the appeal granted in this Order involves an application for approximately \$691,693.00 in funding. 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 Fourth Quarter 2008 (Aug. 1, 2008). Thus, we determine that the action we take today should have a minimal effect on the universal service fund as a whole.

⁴ 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.

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.⁵ The Commission's rules provide that an eligible school, library, or consortium must seek competitive bids for all services eligible for support.⁶ In accordance with the Commission's rules, an applicant must file with USAC, for posting to its website, an FCC Form 470 requesting services.⁷ The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁸

3. The FCC Form 470 describes the applicant's planned service requirements, as well as other information regarding the applicant and the competitive bidding process that may be relevant to the preparation of bids.⁹ The FCC Form 470 also requires applicants to name a person that prospective service providers may contact for additional information about the application.¹⁰ In the *MasterMind Order*, the Commission concluded that, if an FCC Form 470 lists a contact person who is an employee or representative of a service provider who participates in the competitive bidding process, the FCC Form 470 is defective and USAC must deny any funding request based on that FCC Form 470.¹¹

4. In this case, USAC found that Liberal USD violated the Commission's competitive bidding requirements due to a conflict of interest between Liberal USD's E-rate consultant, Chris Webber, and a service provider, MasterMind Internet Services, Inc. (MasterMind).¹² Liberal USD appealed USAC's decision, arguing that USAC provided vague information regarding the alleged competitive bidding violation and that Mr. Webber was not associated with any service provider that participated in the competitive bidding process under the E-rate program.¹³ USAC denied the appeal, stating that Liberal USD's FCC Form 470 indicated that its Request for Proposal (RFP) was posted on Mr. Webber's website, and that he was also the designated contact person for MasterMind, a service

⁵ 47 C.F.R. §§ 54.502, 54.503.

⁶ 47 C.F.R. §§ 54.504. There is one limited exception for existing, binding contracts signed on or before July 10, 1997. *See* 47 C.F.R. § 54.511(c).

⁷ *See* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁸ 47 C.F.R. § 54.504(c); *see also* Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (October 1999) (FCC Form 471). Applicants must also comply with any applicable state and local competitive bid requirements. *See* 47 C.F.R. § 54.504(a).

⁹ 47 C.F.R. § 54.504(b).

¹⁰ FCC Form 470, Item 6; Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) at 7 (FCC Form 470 Instructions).

¹¹ *See Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, 16 FCC Rcd 4028, 4032, para. 9 (2000) (*MasterMind Order*).

¹² *See* Letter from Universal Service Administrative Company, Schools and Libraries Division, to Jerry Clay, Liberal Unified School District 480 (dated Oct. 28, 2003).

¹³ *See* Letter from Chris Webber, on behalf of Liberal Unified School District 480, to Schools and Libraries Division, Universal Service Administrative Company (dated Dec. 16, 2003).

provider that participates in the E-rate program.¹⁴ USAC stated that there should never be a situation where a person is authorized by an applicant to make decisions for the applicant and, at the same time, be associated in any capacity with the service provider who submits bids in response to the FCC Form 470.¹⁵

5. Liberal USD then filed the instant Request for Review with the Commission asserting that no conflict of interest existed between Liberal USD, its consultant or any service provider.¹⁶ Liberal USD also argues that, if USAC had provided more detail in its initial decision letter, then it would have been able to more effectively communicate its arguments to USAC in its appeal.¹⁷

III. DISCUSSION

6. Based on the record, we find that Liberal USD did not violate the Commission's competitive bidding requirements.¹⁸ Specifically, we find that, based on the record, no conflict of interest existed between Liberal USD's E-rate consultant, Mr. Webber, and MasterMind at the time Liberal USD filed its FCC Form 470 for Funding Year 2003. Although prior to September 2000, Mr. Webber was employed by MasterMind and was listed as its official contact person for E-rate services, in September 2000, Mr. Webber notified USAC that he had terminated his employment with MasterMind and, shortly thereafter, had begun an independent E-rate consulting business.¹⁹ In January 2002, Mr. Webber noticed that his name was still being used as the official contact person for MasterMind, and he again contacted USAC to tell them that he was no longer employed by MasterMind or any other service provider.²⁰ Thus, during Funding Year 2003, at the time of Liberal USD's FCC Form 470 filing at issue, Mr. Webber was not employed by MasterMind or any other service provider when he assisted Liberal USD with its E-rate competitive bidding process and application.²¹ Furthermore, Mr. Webber was not listed as a contact person on Liberal USD's FCC Form 470 for Funding Year 2003.²² Instead, during Funding Year 2003, he was merely acting as an E-rate consultant to Liberal USD.²³ Thus, despite Mastermind's failure to update its contact information with USAC, there is no evidence of the kind of conflict of interest that the Commission's rules are designed to prevent. Additionally, we note that, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure by Liberal USD to adhere to core program

¹⁴ See Administrator's Decision on Appeal at 2.

¹⁵ *Id.*

¹⁶ See Request for Review at 2-4. Liberal USD's appeal is limited to the following Funding Request Numbers (FRNs): 797684, 797688, 797699, 797727, 797753, 798365, 798373, 798403, 798411, 798449, 798457, 798506, 798512, 798536, and 798548; see Request for Review.

¹⁷ See Request for Review at 1-2.

¹⁸ See 47 C.F.R. §§ 54.504 (a)-(c).

¹⁹ See Request for Review at 2.

²⁰ *Id.* We further note that, under USAC's procedures, it is the service provider's responsibility to file with USAC a change regarding its contact information, a responsibility that Mastermind apparently failed to discharge. See Schools and Libraries website regarding instructions for service providers to update their contact information, <http://www.usac.org/sl/about/update-contact-information.aspx>. (retrieved Oct. 28, 2008).

²¹ See Request for Review at 2.

²² See FCC Form 470, Liberal Unified School District (posted Dec. 12, 2002).

²³ See Request for Review at 2.

requirements. Accordingly, we grant the Request for Review and remand this matter to USAC for further processing consistent with this Order.

7. To ensure that this matter is resolved expeditiously, we direct USAC to complete its review of the application, and issue an award or denial based on a complete review and analysis no later than 90 days from release of this Order.²⁴ In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.²⁵ 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.

8. We emphasize the limited nature of this decision. The Commission's competitive bidding rules serve as a central tenet of the E-rate program. They ensure more efficient pricing for telecommunications and other eligible services purchased by schools and libraries and help deter waste, fraud and abuse. Although we grant the subject appeal before us, our action here does not eliminate any of the Commission's competitive bidding requirements or the obligations of participants in the E-rate program to comply with the Commission's rules. We caution applicants to carefully review their FCC Forms 470 and other application materials to ensure that no employee or representative of a service provider who may participate in the competitive bidding process is listed as a contact person.

9. 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 this appeal, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the 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 the Commission's 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 the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains 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. 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

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under 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 Request for Review filed by Liberal Unified School District 480,

²⁴ 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.

²⁵ 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.

Liberal, Kansas, on May 5, 2004, IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

11. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under 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 Universal Service Administrative Company SHALL COMPLETE its review of the application and ISSUE an award or a denial based on a complete review and analysis no later than 90 days from the release of this Order.

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

Jennifer K. McKee
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