

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the Decision of the
Universal Service Administrator by
New Haven Free Public Library
New Haven, Connecticut
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-192433
CC Docket No. 02-6

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 an appeal of a decision by the Universal Service Administrative Company (USAC) rescinding funding disbursed to the New Haven Free Public Library (New Haven or the library) for discounted services under the schools and libraries universal service support mechanism, (also known as the E-rate program). USAC found that New Haven's failure to produce requested invoice documentation during an internal audit warranted the recovery of the disbursed commitment. We find good cause exists to grant and remand the appeal to USAC for action consistent with this order. To ensure that the underlying matter is resolved expeditiously, we direct USAC to suspend its recovery of the disbursed E-rate universal service funding in accordance with the terms expressed herein and review its audit findings in light of the invoices presented to USAC on appeal, 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. In the 1997 Universal Service Order, the Commission required schools and

1 Request for Review of the Decision of New Haven Free Public Library (filed on Jan. 31, 2005) (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 Letter from Universal Service Administrative Company, Schools and Libraries Division, to John Glendon, New Haven Free Public Library (dated May 27, 2004).

3 We estimate that the appeal granted in this Order involves an application for approximately \$36,240.00 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 minimal impact on the universal service fund as a whole.

4 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9002, para. 425 (1997) (Universal Service Order), as corrected by Federal-State Joint Board on Universal Service,

libraries to maintain appropriate records, in part to ensure compliance during the auditing process.⁵ The Commission noted that, in consultation with the Department of Education, it would engage an independent auditor to conduct random audits of schools and libraries and that any requested records should be made available for routine, random audits.⁶ It further stated that the beneficiary should be able to produce appropriate records requested by any auditor appointed by a state education department, the fund administrator, or any other state or federal agency with jurisdiction that might suspect fraud or other illegal conduct.⁷ The Commission concluded that eligibility for E-rate universal service support would be conditioned on the consent of the schools and libraries to cooperate in future random audits.⁸

3. *New Haven's Request for Review.* On October 16, 2003, the Internal Audit Division of USAC announced to New Haven that its participation in the E-rate program would be subject to an internal audit.⁹ In the Announcement Letter, USAC instructed New Haven to provide documents related to its participation in the E-rate program during Funding Year 2000 (July 1, 2000-June 30, 2001).¹⁰ The deadline for presenting these documents to USAC was October 31, 2003.¹¹ During the auditing process, USAC verbally notified New Haven that it must produce the relevant invoices or billing documentation to demonstrate compliance with the E-rate requirements.¹² New Haven informed USAC that the service provider submitted its bills to the City of New Haven, not to the library, and therefore the library did not have the documentation requested by USAC.¹³ Subsequently, on May 27, 2004, the Schools and Libraries Division (SLD) of USAC issued a letter to New Haven to recover the erroneously disbursed funds because New Haven did not produce evidence when requested by USAC indicating that the E-rate funds were remitted to the service provider for the approved supported eligible services.¹⁴ On July 22,

(...continued from previous page)

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 (November 2, 2000); *see also* 47 C.F.R. §§ 54.501-54.503.

⁵ *See Universal Service Order*, 12 FCC Rcd at 305-06, para. 581; *see also* 47 C.F.R. § 54.516 (1997).

⁶ *See Universal Service Order*, 12 FCC Rcd at 305-06, para. 581.

⁷ *Id.*

⁸ *Id.*

⁹ *See* Letter from Wayne Scott, Internal Audit Division of USAC, to John Glendon, New Haven Free Public Library (dated Oct. 16, 2003).

¹⁰ *Id.* at 2.

¹¹ *Id.* at 1.

¹² *See* Letter from James Welbourne, New Haven Free Public Library, to Schools and Libraries Division of USAC, SLD Box 125 Correspondence Unit (dated July 22, 2004) (New Haven USAC Appeal) (acknowledging request made during the audit and providing requested documentation).

¹³ Letter from John Glendon, New Haven Free Public Library to Cynthia Beach, Internal Audit Division of USAC (dated Dec. 8, 2004) (Audit Response Letter). The audit report indicates this same reason was provided in response to the request for billing documents during the audit; *see also* Schools and Libraries Beneficiary Audit Report – New Haven Free Public Library (USAC Audit No. SL2003BE116) from Internal Audit Division of USAC to George McDonald, Vice President, Schools and Libraries Division of USAC (dated Mar. 1, 2004) (Audit Report).

¹⁴ *See* Recovery Letter. During reviews of funding commitments, USAC may determine that funds were committed in error or disbursed in error and therefore will adjust those funding commitments or recover improperly disbursed funds to ensure that no funds are used in violation of program rules. *See* USAC website, Commitment Adjustment (COMAD), <http://www.universalservice.org/sl/about/commitments-adjustments.aspx> (retrieved Oct. 28, 2008).

2004, New Haven appealed this decision to USAC and included the previously requested invoice documentation.¹⁵

4. On December 1, 2004, while New Haven's USAC appeal was pending, USAC sent a letter to New Haven noting New Haven's noncompliance with the E-rate requirements as determined during the internal audit and requesting certain actions be taken by New Haven to ensure future compliance.¹⁶ In response to USAC's letter, on December 8, 2004, New Haven sent a letter to USAC reiterating the arguments set forth in its July 22, 2004 appeal and providing another copy of the requested invoices.¹⁷ New Haven also alleged that it was misinformed by the service provider regarding its billing process and that the library's new business manager discovered the invoice documentation on the library premises.¹⁸ Additionally, on December 15, 2004, New Haven submitted a plan to USAC to strengthen internal controls ensuring retention of documentation that shows full payment to the service provider(s) of the cost of the goods or services for which reimbursement is sought via the FCC Form 472 Billed Entity Applicant Reimbursement Form.¹⁹ Subsequently, on December 15, 2004, USAC denied New Haven's appeal because it deemed the requested invoices "new information" and because USAC at the time did not accept new information on appeal, unless the applicant was not given the opportunity to provide the documentation or an error was made by USAC.²⁰ On January 31, 2005, New Haven filed the instant Request for Review with the Commission.²¹

5. In its Request for Review, New Haven alleges that it adhered to all E-rate program requirements and that the E-rate funds were not erroneously disbursed.²² New Haven argues that it was not informed by USAC that the invoice documentation must be provided within a certain timeframe.²³ Additionally, New Haven asserts that the invoice documentation it provided on its initial appeal to USAC and in its appeal to the Commission does not constitute new information; rather, the documentation existed the entire time and is merely information that New Haven was not able to locate at the time of USAC's initial request.²⁴

¹⁵ See New Haven USAC Appeal.

¹⁶ Letter from Cynthia Beach, Schools and Libraries Division, USAC to John Glendon, New Haven Free Public Library (dated Dec. 1, 2004).

¹⁷ See Audit Response Letter.

¹⁸ *Id.* at 1.

¹⁹ Letter from John Glendon, New Haven Free Public Library, to Cynthia Beach, Internal Audit Division of USAC (dated Dec. 15, 2004). The Compliance Plan was revised by New Haven on Jan. 5, 2005. Letter from New Haven Free Public Library to Cynthia Beach, Schools and Library Division of USAC (dated Jan. 5, 2005). The Billed Entity Applicant Reimbursement (BEAR) Form, FCC Form 472, is one of two forms available to secure reimbursement from USAC for the services rendered under the E-rate program. See FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form. If the applicant pays the full cost of the services directly to the service provider, then the applicant must submit an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) form, to secure reimbursement from USAC. *Id.*

²⁰ Letter from Schools and Libraries Division of USAC to James Welbourne, New Haven Free Public Library at 1 (dated Dec. 15, 2004).

²¹ See Request for Review.

²² See *id.* at 1.

²³ *Id.*

²⁴ *Id.*

III. DISCUSSION

6. In this order, we grant New Haven's appeal of USAC's decision to recover E-rate funding because New Haven did not produce invoice documentation requested during a USAC internal audit. For the reasons discussed below, we grant New Haven's appeal and remand this matter to USAC, along with the invoice documentation, and direct USAC to issue a final decision on its funding commitment to New Haven no later than 90 calendar days from the release date of this order.

7. We believe good cause exists to grant New Haven's appeal to the Commission. We find that USAC should accept the invoice documentation provided by New Haven on appeal.²⁵ New Haven should have been able to produce its billing records upon USAC's initial inquiry, and USAC properly sought recovery of funding after New Haven failed to produce the required documentation. Once USAC had the requested documentation in its possession, however, it had the ability to determine if program violations had occurred. Thus, we direct USAC to review the submitted invoice documentation and modify, as necessary, its audit findings. Further, USAC should seek any additional information it needs from the applicant to complete its review. The primary purpose of audits is to ensure that beneficiaries and service providers receiving E-rate universal service support are complying with the Commission's rules and E-rate program requirements, and to assist in the prevention and detection of waste, fraud, and abuse. We find, at this time, there is no evidence in the record that New Haven engaged in activity intended to defraud or abuse the E-rate program.²⁶ In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.²⁷ 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. 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 appeal addressed here, the Commission reserves the right to conduct audits and investigations to determine compliance with the E-rate program rules and 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 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

9. 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

²⁵ See New Haven USAC Appeal; *see also* Request for Review.

²⁶ USAC website, Schools and Libraries Division, Understanding Beneficiary Audits, <http://www.usac.org/sl/about/audits/default.aspx> (retrieved Oct. 28, 2008).

²⁷ 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.

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 Request for Review filed by New Haven Free Public Library, New Haven Connecticut, on January 31, 2005 IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

10. 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 above captioned application and REVISE audit findings, if warranted, based on a complete review and analysis no later than 90 calendar days from the release date of this order.

11. 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, and 1.102, this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
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Telecommunications Access Policy Division
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