

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
United Talmudical Academy
Brooklyn, New York
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-148011
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 filed by United Talmudical Academy (UTA) of a decision of the Universal Service Administrative Company (USAC) seeking to recover funding disbursed to UTA in Funding Year 1999 under the schools and libraries universal service support mechanism (also known as the E-rate program) on the grounds that UTA did not pay the non-discounted portion of the E-rate services it purchased. Based on the record before us, it appears that this matter can be resolved through USAC's review of additional documentation UTA provided to the Commission in its appeal, which it had not previously provided to USAC. Therefore, we remand the underlying application associated with this appeal to USAC for further action consistent with this Order. In doing so, we direct USAC to review this matter within 60 calendar days from the release date of this Order in light of this additional information provided to the Commission on appeal. To ensure that the underlying matter is resolved expeditiously, if USAC finds that UTA has documentation demonstrating its timely payment of the non-discounted portion of the purchase price of the services at issue, then USAC shall immediately suspend its recovery actions against UTA with respect to this application.

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. To ensure that applicants are able to use the discounted services effectively, and thereby minimize waste, Commission rules require that applicants who receive E-rate discounts pay the full non-discounted portion of the services or products purchased with E-rate discounts. In the

1 Letter from Shiya Dresdner, United Talmudical Academy, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 13, 2007) (Request for Review); see also Letter from Arthur Jacknis, Communication Data and Security, Inc., to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed Jan. 8, 2007). 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 47 C.F.R. §§ 54.501-503.

3 47 C.F.R. § 54.523.

Universal Service First Report and Order, the Commission determined that requiring schools and libraries to pay a share of the costs encourages them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively.⁴

3. In Funding Year 1999, USAC granted UTA a 90 percent E-rate discount on \$1,238,562 in purchases from Communications Data & Security, Inc. as part of UTA's FCC Form 471 for Application No. 148011 for Funding Year 1999.⁵ In 2004, an audit report conducted by the Commission's Office of Inspector General, however, found that UTA had not timely paid its 10 percent share of the price of the E-rate services purchased as part of the 118 funding requests that constitute UTA's FCC Form 471 for Application No. 148011.⁶ In response to this audit report, USAC sought to recover \$943,300 in disbursements made to UTA for 67 of these funding requests through its commitment adjustment procedures.⁷ UTA appealed USAC's recovery efforts, claiming that it had paid its entire share for all its funding requests by the time of the audit, consistent with E-rate program rules.⁸ In its review of the documentation that UTA provided as part of its appeal, USAC, however, found insufficient evidence of timely payment for three of the funding requests contained in the application, for which UTA owed approximately \$7,300.⁹ Therefore, USAC denied UTA's appeal that it had paid its non-discounted share of the purchase price for the services listed in the application.¹⁰ UTA then appealed to the Commission and provided additional documentation, which it had not previously provided to USAC, to support its claim that it paid all of the funding requests at issue in the application on a timely basis.¹¹

III. DISCUSSION

4. We grant UTA's appeal. Based on the foregoing, it appears that this matter can be resolved through USAC's review of all the documentation that UTA has submitted to USAC and to the Commission concerning the funding requests at issue as part of UTA's FCC Form 471 for Application No. 148011 for Funding Year 1999. We find that directing USAC to consider UTA's additional documentation in reviewing UTA's application for funding will not reduce or eliminate any review procedures or program requirements that applicants must comply with to receive funding, or otherwise result in waste, fraud or abuse, or a failure to adhere to core program requirements. Therefore, we direct USAC to review this matter within 60 calendar days of the release date of this Order in light of the additional information provided to the Commission in UTA's appeal. If USAC finds that UTA has documented its timely payment of its share of the purchase price of all of the funding requests at issue consistent with E-rate program rules, then USAC shall immediately suspend its recovery actions against UTA with respect to this application. Our direction provided herein is limited to the issue of determining whether UTA paid its non-discounted share of the purchase price for UTA's FCC Form 471 for Application No. 148011 for Funding Year 1999. If there are other issues with this application that would

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9036, para. 493 (1997) (*subsequent history omitted*) (*Universal Service First Report and Order*).

⁵ See Letter from USAC, Schools and Libraries Division, to Mozes Greenfeld, United Talmudical Academy (dated Nov. 16, 1999).

⁶ See Memo from Office of Inspector General, Federal Communications Commission, to Chairman, Federal Communications Commission (dated Jun. 7, 2004).

⁷ See Request for Review at 3.

⁸ *Id.* at 2-8.

⁹ See Letter from USAC, Schools and Libraries Division, to Moses Greenfeld, United Talmudical Academy at 2 (dated July 5, 2007).

¹⁰ See *id.*

¹¹ See Request for Review at Exhibits F-K.

result in a commitment adjustment or request for further information, we direct USAC to act accordingly and expeditiously. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.¹² 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.

5. We stress 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.¹³ Although we grant the request for review addressed here, 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 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

6. 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that United Talmudical Academy's Request for Review IS GRANTED and its application REMANDED to USAC for further consideration in accordance with the terms of this Order.

7. 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 no later than 60 calendar days from release of this Order and, if warranted, suspend its recovery of the disbursed E-rate universal service funding in accordance with the terms expressed herein.

¹² 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.

¹³ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006).

8. 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
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau