

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
West Branch-Rose City Area Schools
West Branch, Michigan
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-291270
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 West Branch-Rose City Area School (West Branch) of a decision by the Universal Service Administrative Company (USAC) denying West Branch's request for reimbursement of the cost of services rendered under the schools and libraries universal service support mechanism, also known as the E-rate program, for Funding Year 2002. USAC denied West Branch's request for reimbursement because the relevant invoice indicated that West Branch had paid service providers that were not listed on its Funding Commitment Decision Letter (FCDL). Based on the record before us, as set forth below, it appears that this matter can be resolved through USAC's review of the documentation West Branch provided to the Commission in its appeal. Therefore, we remand the underlying matter associated with this appeal to USAC for further action consistent with this order. To ensure that the underlying matter is resolved expeditiously, we direct USAC to issue a reimbursement or a denial based on a complete review and analysis no later than 60 calendar days from 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. Following completion of the application and fulfillment of the Commission's

1 Letter from Ron Davis, West Branch-Rose City Area Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 13, 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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 See Letter from USAC, Schools and Libraries Division, to Ron Davis, West Branch-Rose City Area Schools at 1-2 (dated Aug. 29, 2005).

3 In performing a complete review and analysis of the underlying matter, USAC shall either grant the requested reimbursement, or, if denying the requested reimbursement, provide the applicant with any and all grounds for denial.

4 47 C.F.R. §§ 54.501-54.504.

competitive bidding requirements, the applicant must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of the funds needed to cover the discounts to be given for eligible services.<sup>5</sup> USAC informs the applicant and the service provider(s) via the FCDL the extent to which, if any, the requested funding will be provided.<sup>6</sup>

3. After the eligible services have been delivered, the applicant determines which payment method to use to secure reimbursement from USAC for the services rendered under the E-rate program.<sup>7</sup> If the applicant pays the full cost of the services, then the applicant must submit an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) form, to secure reimbursement from USAC.<sup>8</sup> If the applicant pays only the reduced cost of the services, then the service provider must file an FCC Form 474, Service Provider Invoice (SPI) form, to receive its reimbursement.<sup>9</sup> Based on information provided on the FCC Form 472 or the FCC Form 474, USAC remits the E-rate support payments to the service provider.<sup>10</sup> Because USAC only issues payments directly to service providers, E-rate program rules require service providers to reimburse applicants (billed entities) via the BEAR process within 20 business days of receiving the reimbursement payment from USAC.<sup>11</sup>

4. In Funding Year 2002, for FCC Form 471 No. 291270, Funding Request Number (FRN) 744176, USAC granted West Branch a 90 percent discount on \$38,032 for internal connections from Northern Networking, a reseller.<sup>12</sup> In making payments for services, West Branch chose to use the BEAR process.<sup>13</sup> At Northern Networking's request, West Branch made direct payments to Northern Networking's two main suppliers (\$22,851 to Ingram Financial Services Co. (IFSC), a division of Ingram Micro, and \$19,884 to Compaq), rather than to Northern Networking.<sup>14</sup> When West Branch filed its FCC

<sup>5</sup> 47 C.F.R. § 54.504(c); *see* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

<sup>6</sup> *See* USAC website, Receive Your Funding Decision, <http://www.universalservice.org/sl/applicants/step09/> (retrieved Oct. 28, 2008).

<sup>7</sup> *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9217-19, paras. 44-50 (2003) (*Schools and Libraries Second Report and Order*); *see also* USAC website, Form 472 Filing Information (retrieved Oct. 28, 2008) <http://www.sl.universalservice.org/reference/8bear.asp>; USAC website, Invoice USAC, <http://www.universalservice.org/sl/applicants/step11/> (retrieved Oct. 28, 2008). Beginning July 1, 2004, the Commission's rules require the service provider to allow the applicant to select the payment method governing the payment for services rendered in accordance with the E-rate program. *See* 47 C.F.R. §54.514 (b).

<sup>8</sup> FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, [http://www.universalservice.org/\\_res/documents/sl/pdf/472.pdf](http://www.universalservice.org/_res/documents/sl/pdf/472.pdf) (retrieved Oct. 28, 2008).

<sup>9</sup> FCC Form 474, Service Provider Invoice (SPI) Form, [http://www.universalservice.org/\\_res/documents/sl/pdf/474.pdf](http://www.universalservice.org/_res/documents/sl/pdf/474.pdf) (retrieved Oct. 28, 2008).

<sup>10</sup> *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 17 FCC Rcd 1914, 1919, para. 9 (2002); *see also Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9217, para. 42.

<sup>11</sup> *See* 47 C.F.R. § 54.514(b); *see also Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9219, para. 51.

<sup>12</sup> *See* Letter from USAC, Schools and Libraries Division, to Starr Garter, Rose City Elementary School at 6 (Oct. 8, 2002) (FCDL).

<sup>13</sup> *See supra* para. 3.

<sup>14</sup> *See* Request for Review, Attachment B at 8 (Letter from Cassie Lapinskas, Northern Networking, to Ron Davis, West Branch-Rose City Area Schools (dated Nov. 25, 2002)); Request for Review, Attachment B at 28-30 (cancelled checks from Sept. 4, 2002 and Sept. 25, 2002).

Form 472 seeking reimbursement from USAC for the payments made to Northern Networking's suppliers, USAC denied its reimbursement request because the suppliers were not the same providers that had been approved for funding in the FCDL.<sup>15</sup> In its appeal to the Commission, West Branch provided a letter from Northern Networking instructing West Branch to make the payments West Branch made to IFSC and Compaq and submitted copies of cancelled checks to IFSC and Compaq to document its payments.<sup>16</sup>

### III. DISCUSSION

5. We grant West Branch's appeal. Based on the foregoing, it appears that this matter can be resolved through USAC's review of the additional documentation submitted by West Branch as part of its appeal to the Commission. This documentation demonstrates that West Branch made the payments to IFSC and Compaq at the request of Northern Networking, the provider approved for funding in the FCDL. Providing an opportunity for West Branch to correct any misunderstanding about whether payment was made to the proper parties would not, in and of itself, result in waste, fraud or abuse, or a failure to adhere to core program requirements. Therefore, we direct USAC to review the Northern Networking letter and the cancelled checks provided by West Branch as part of its appeal to the Commission. If USAC finds that the arrangements and payments are consistent with E-rate program rules, then USAC shall reimburse West Branch the appropriate amount for its payments.<sup>17</sup> To ensure that the underlying matter is resolved expeditiously, we direct USAC to grant or deny reimbursement based on a complete review and analysis no later than 60 calendar days from the release date of this order.<sup>18</sup> It is important to note that the guidance provided herein is limited to the issue of the requested reimbursement amount for FRN 744176 only. If there are other issues with this application that would result in a denial of reimbursement or request for further information, we direct USAC to act accordingly. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.<sup>19</sup> 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.

6. 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, 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

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<sup>15</sup> See Letter from USAC, Schools and Libraries Division, to Ron Davis, West Branch-Rose City Area Schools at 1-2 (dated Aug. 29, 2005).

<sup>16</sup> See *supra* n.13.

<sup>17</sup> We estimate that the appeal granted in this order involves approximately \$33,000 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.

<sup>18</sup> In performing a complete review and analysis of the underlying matter, USAC shall either grant the requested reimbursement, or, if denying the requested reimbursement, provide the applicant with any and all grounds for denial.

<sup>19</sup> 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.

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

7. 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 West Branch-Rose City Area School's Request for Review IS GRANTED and its application REMANDED to USAC for further consideration in accordance with the terms of this order.

8. 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 remanded application and ISSUE a reimbursement or a denial based on a complete review and analysis no later than 60 calendar days from release of this order.

9. IT IS FURTHER ORDERED, 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, that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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