

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of the
Decisions of the
Universal Service Administrator by
Addison Northeast Supervisory Union
Bristol, Vermont, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-444185, et al.
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 eight appeals of decisions of the Universal Service Administrative Company (USAC) denying applications for discounted services under the schools and libraries universal service support mechanism (also known as the E-rate program). We find that the issue raised here was recently addressed by the Wireline Competition Bureau (Bureau) in the Brewster Academy Order. Therefore, we remand the underlying applications to USAC for further action consistent with the Brewster Academy Order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 60 days from release of this Order.

II. BACKGROUND

2. To provide services under the E-rate program (as well as the other universal service support mechanisms), service providers must obtain a Service Provider Identification Number (SPIN) from USAC. USAC assigns a SPIN to each company that files an FCC Form 498 to register with USAC

1 The list of applicants is attached in an Appendix to this Order. In this Order, we use the term "appeals" to generally refer to requests for review of decisions by USAC. 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). We estimate that the appeals granted in this Order involve applications for approximately \$400,000 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.

2 Requests for Review of Decisions of the Universal Service Administrator by Brewster Academy et al, CC Docket No. 02-6, Order, 22 FCC Rcd 9185 (Wireline Comp. Bur. 2007) (Brewster Academy Order).

3 Id.

4 See USAC website, Step 1: Obtain a Service Provider Information Number (Submit FCC Form 498), http://www.usac.org/sl/providers/step01/ (retrieved Aug. 12, 2008).

as a carrier or service provider that receives support from the universal service support mechanism.<sup>5</sup> The Communications Act of 1934, as amended, permits only “telecommunications carriers” to receive direct reimbursement under the universal service support mechanism for the provision of discounted telecommunications services.<sup>6</sup> Some of the companies that register with USAC for a SPIN designate themselves as telecommunications carriers on the FCC Form 498. Certain categories of service providers are automatically considered to be telecommunications carriers eligible to participate in universal service support programs, including incumbent local exchange carriers (LECs), competitive access providers (CAPs)/competitive LECs, and interexchange carriers (IXCs), because they are widely acknowledged to be the types of service providers that provide telecommunications services on a common carrier basis.<sup>7</sup> Under program procedures, however, even if a service provider designates itself under one of these categories on the FCC Form 498, the presumption that they provide service on a common carriage basis remains subject to verification by USAC.<sup>8</sup>

3. In the *Brewster Academy Order*, released in May 2007, the Bureau granted 27 appeals of decisions by USAC denying applications for discounted services under the E-rate program on the grounds that their requests for telecommunications service were from providers that do not provide telecommunications on a common carrier basis.<sup>9</sup> The Bureau explained that inadvertently using an incorrect SPIN for a service provider that is otherwise eligible to provide telecommunications service is a clerical, ministerial or procedural error, and therefore, complete rejection of these applications is not warranted.<sup>10</sup> Thus, the Bureau determined that if the petitioners had been given an opportunity to correct the SPINs, they may have been eligible for funding under the E-rate program.<sup>11</sup> Additionally, to the extent necessary, the Bureau also waived section 54.504(c) of the Commission’s rules to allow the petitioners to correct the SPIN errors on their FCC Forms 471.<sup>12</sup> Accordingly, the Bureau remanded the

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<sup>5</sup> Pursuant to the Commission’s rules, USAC must obtain the service provider name, address, telephone number, and contact names, as well as other information, in order for USAC to be able to perform its billing, collection and disbursement functions. See, e.g. 47 C.F.R. § 54.515. Therefore, the Commission and USAC developed the Service Provider Identification Number and Contact Form, FCC Form 498, to collect this information from carriers and service providers that receive support. See Instructions for Completing the Service Provider Identification Number and Contact Information Form (FCC Form 498), OMB 3060-0824 (May 2006); see also USAC website, USAC Forms, <http://www.usac.org/fund-administration/forms/> (retrieved Aug. 12, 2008).

<sup>6</sup> See 47 U.S.C. § 254(h)(1)(B); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9177-78, 9005-23, 9084-90, paras. 589-600 (1997) (*Universal Service First Report and Order*); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5413-14, paras. 163-164 (1997) (*Fourth Reconsideration Order*). Non-telecommunications providers are eligible for support for providing voice mail, Internet access, and installation and maintenance of internal connections, but are not eligible to provide telecommunications services under the universal service support mechanism. See 47 C.F.R. § 54.517.

<sup>7</sup> See *Request for Review of the Decision of the Universal Service Administrator by Virginia State Department of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-163045, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8677, at 8678, para. 3 (Wireline Comp. Bur. 2002).

<sup>8</sup> *Id.*; see also USAC website, Step 1: Providers of Telecommunications Services, <http://www.usac.org/sl/providers/step01/providers-telecommunications-services.aspx> (retrieved Aug. 12, 2008).

<sup>9</sup> *Brewster Academy Order*, 22 FCC Rcd 9185.

<sup>10</sup> See *id.* at 9188-89, para. 8.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* at 9189, para. 9.

underlying applications associated with these appeals to USAC for further action consistent with that order.

## II. DISCUSSION

4. We grant the petitioners' Requests for Review.<sup>13</sup> USAC denied applicants E-rate discounts on telecommunications services finding that their service providers were not registered as telecommunications carriers. In their appeals to the Commission, Petitioners state that their service providers were telecommunications carriers for the relevant funding years, although they inadvertently used the wrong SPINs for those providers in their funding requests.<sup>14</sup> Specifically, three petitioners, Addison Northeast Supervisory Union, Fairland Public Schools, and Weybridge Elementary School, state that they were unaware that their telecommunications service provider changed its SPIN as part of a business restructuring, and therefore these schools provided USAC with the incorrect SPINs.<sup>15</sup> Three other petitioners, Leake and Watts Service, Inc., Rivercrest Independent School District, and Ruidoso Municipal School District, state that they accidentally entered incorrect SPINs on their applications but that their service providers are eligible to provide discounted telecommunications service.<sup>16</sup> One petitioner, Sandhills Technology/Telecommunications Project, indicates that it sought to purchase service from two eligible telecommunications carriers and was told to use the SPIN of a joint entity they created, although that entity was not, itself, registered as a telecommunications carrier.<sup>17</sup> Lastly, Cooperative Educational Service Agency 2 states that it filed a SPIN change request to switch from its former service provider (who went out of business) to an eligible service provider, but mistakenly failed to provide USAC with the SPIN of the new provider.<sup>18</sup> Thus, based on the facts and circumstances of these specific cases, we grant the petitions and remand the underlying applications to USAC for it to permit the applicants to correct their SPIN information, based on the directives in the *Brewster Academy Order*.<sup>19</sup> Additionally, to the extent necessary, we also waive section 54.504(c) of the Commission's rules to allow the petitioners to correct the SPIN errors on their FCC Forms 471.<sup>20</sup> Our guidance is limited to the SPIN

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<sup>13</sup> See Appendix.

<sup>14</sup> See Letter from Amy Smith, Addison Northeast Supervisory Union, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed Oct. 18, 2006) (Addison Request for Review); Letter from Carol Romack, Cooperative Education Service Agency 2, to Federal Communications Commission, CC Docket Nos. 96-45, 02-6, at 2 (filed Jan. 4, 2007) (CESA 2 Request for Review); Letter from Mary Caudill, Fairland Public Schools, to Federal Communications Commission, CC Docket No. 02-6, at 1 (filed Apr. 20, 2007) (Fairland Request for Review); Letter from Janice Meyers, Leake and Watts Services, Inc., to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6, at 1-2 (filed Apr. 10, 2007) (Leake & Watts Request for Review); Letter from Freddy Wade, Rivercrest Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 2 (filed Jan. 8, 2007) (Rivercrest Request for Review); Letter from Winston Himsworth, on behalf of Ruidoso Municipal School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed Jan. 8, 2007) (Ruidoso Request for Review); Letter from David Cosson, on behalf of Sandhills Technology/ Telecommunications Educational Project, to Federal Communications Commission, CC Docket Nos. 96-45, 02-6, at 4-6 (filed July 2, 2001) (Sandhills Request for Review); Letter from Artley Wolfson, Weybridge Elementary School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 02-6, at 2-3 (filed Dec. 27, 2006) (Weybridge Request for Review).

<sup>15</sup> See Addison Request for Review at 1; Fairland Request for Review at 1; Weybridge Request for Review at 2.

<sup>16</sup> See Leake & Watts Request for Review at 1-2; Rivercrest Request for Review at 2; Ruidoso Request for Review at 1.

<sup>17</sup> See Sandhills Request for Review at 2, 4-6.

<sup>18</sup> See CESA 2 Request for Review at 1-2.

<sup>19</sup> See *Brewster Academy Order*, 22 FCC Rcd at 9188-90, paras. 8-10.

<sup>20</sup> See *id.* at 9189, para. 9.

issue only. If there are other issues with these applications that would result in a denial or request for further information, we direct USAC to act accordingly. 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 60 calendar days from release of this Order.<sup>21</sup> In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.<sup>22</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.

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.<sup>23</sup> Although we grant the requests 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 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.

### III. 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 the Requests for Review as listed in the Appendix ARE GRANTED and 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 each remanded application listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from release of this Order.

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<sup>21</sup> 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.

<sup>22</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.

<sup>23</sup> 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, 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 pursuant to the authority delegated in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3 of the Commission's rules, that section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c), IS WAIVED to the extent necessary as provided herein.

9. 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

## APPENDIX

## Requests for Review

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>
Addison Northeast Supervisory Union Bristol, VT	444185	2005
Cooperative Education Service Agency 2 Milton, WI	498002	2006
Fairland Public Schools Fairland, OK	502909	2006
Leake and Watts Services Yonkers, NY	522053	2006
Rivercrest Independent School District Bogata, TX	518675	2006
Ruidoso Municipal School District Ruidoso, NM	513313	2006
Sandhills Technology/Telecommunications Project Gibbon, NE	131643	1999
Weybridge Elementary School Weybridge, VT	448470	2005