

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of Decisions
of the Universal Service Administrator by
Broaddus Independent School District
Broaddus, Texas, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD- 214609, 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 four appeals of decisions by 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. USAC denied the applicants funding during Funding Years 2000-2003 after changing the service category of the applicants' funding requests because USAC determined that the applicants' service providers were not telecommunications carriers as required by program rules. As explained below, we remand the underlying applications associated with these appeals to USAC for further action consistent with this order. To the extent necessary, we waive section 54.504(c) of the Commission's rules to allow the petitioners to amend their original FCC Form 471 applications submitted to USAC. To ensure that the underlying applications are resolved

1 A list of the appeals is provided in the Appendix. In this order, we use the term "appeals" to generally refer to requests for review of decisions issued by USAC. 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(a). Funding Years start July 1 and run through June 30 of the following year.

3 47 C.F.R. § 54.504(c) (providing that applicants shall submit a completed FCC Form 471 application to USAC). The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), affirmed by WAIT Radio v. FCC, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. Northeast Cellular, 897 F.2d at 1166.

expeditiously, we direct USAC to complete its review of each application listed in the Appendix and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release date of this order.⁴

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries and consortia that may include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁵ Applicants may obtain discounts on Internet access and internal connections irrespective of whether they purchase those offerings from telecommunications or non-telecommunications carriers.⁶ To receive E-rate discounts on “telecommunications services,” however, applicants must purchase those services from entities that are “telecommunications carriers.”⁷ The term “telecommunications carrier” includes only “provider[s] of telecommunications service,” which Congress defined as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.”⁸

III. DISCUSSION

3. We grant the petitioners’ appeals. In all four cases, USAC changed the service category of the petitioners’ funding requests and then denied funding on the grounds that the service was not being provided by an eligible telecommunications provider.⁹ In their appeals to the Commission, the petitioners either dispute USAC’s change of the category of service in their funding requests to telecommunications

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.

⁵ 47 C.F.R. §§ 54.501-54.503.

⁶ 47 C.F.R. §§ 54.501(a), 54.503 (eligibility for services provided by telecommunications carriers); 54.517(b) (services provided by non-telecommunications carriers).

⁷ 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 receive support for providing telecommunications services. 47 C.F.R. § 54.517.

⁸ 47 U.S.C. §§ 153(44), (46); *Fourth Reconsideration Order*, 13 FCC Rcd at 5413-14, paras. 163-164. USAC’s website provides information about all service providers that have registered with USAC, including whether they have demonstrated that they are telecommunications carriers. USAC website, SPIN and BEAR Contract Search, http://www.sl.universalservice.org/Forms/SPIN_Contact_Search.asp (retrieved Apr. 14, 2008).

⁹ Letter from USAC, Schools and Libraries Division, to Betty Miller, Broadus Independent School District (dated Dec. 4, 2001); Letter from USAC, Schools and Libraries Division, to Mary Ellen Darling, Genesee Valley/Wayne-Finger Lakes BOCES Educational Technology Service (dated Jun. 9, 2000) (GV/WFL Funding Commitment Decision Letter); Letter from USAC, Schools and Libraries Division, to LeAnn Symanski, Grandville Public School District (dated Aug. 13, 2002) (Grandville Funding Commitment Decision Letter); Letter from USAC, Schools and Libraries Division, to Jeffrey Goure, Taloga Independent School District (dated July 23, 2001) (Taloga Funding Commitment Decision Letter).

services; admit that they made an error in their service category selection and seek an opportunity to cure such mistake; or claim that they are not using the telecommunications portion of the services requested.¹⁰

4. *Broaddus Independent School District (Broaddus)*. In its appeal to the Commission, Broaddus asserts that USAC incorrectly changed the service category of its funding request for Funding Year 2001 from Internet access to telecommunications services, and then denied funding based on the ineligibility of the chosen provider to provide telecommunications services.¹¹ Broaddus claims that it was specifically contracting for Internet access, but, in order to receive the most cost-effective Internet access service, it chose a bundled service from an Internet access provider that included a telecommunications service.¹²

5. We grant Broaddus's appeal. We find that Broaddus has provided a sufficient explanation to warrant a remand to USAC. We instruct USAC to inquire whether Broaddus was utilizing the telecommunications portion of the bundled service. If, after further inquiry, USAC finds that Broaddus' service request was for Internet access only, USAC shall continue to process Broaddus' application for funding.

6. *Genesee Valley/Wayne-Finger Lakes BOCES Educational Technology Service (GV/WFL)*. In Funding Year 2000, GV/WFL sought discounts for Internet access.¹³ In an attachment to its FCC Form 471 application, GV/WFL provided a copy of its lease agreement for the lease of fibers to "transport voice, data and video."¹⁴ Based on this description, USAC changed GV/WFL's category of service requested from Internet access to internal connections, and denied the funding request for being below the funding cap for Priority Two funding requests for Funding Year 2000.¹⁵ In its appeal to USAC, GV/WFL asserted that USAC should not have changed its category of service and that the service requested was for the lease of fiber optic lines, allowing Internet access in its school district.¹⁶ USAC denied GV/WFL's appeal and found that, upon a second review of the application, GV/WFL sought support for telecommunications services and not for internal connections.¹⁷ USAC thus reclassified GV/WFL's funding request as telecommunications services and denied its funding request because

¹⁰ Letter from Betty Miller, Broaddus Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed Nov. 18, 2002) (Broaddus Request for Review); Letter from Camille Sorenson, Genesee Valley/Wayne-Finger-Lakes Educational Technology Service, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed Mar. 26, 2001) (GV/WFL Request for Review); Letter from Barbara Hiemstra, Grandville Public School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed Apr. 16, 2003) (Grandville Request for Review); Letter from Chris Webber, Taloga Independent School District 10, to Office of the Secretary, Federal Communications Commission (filed Mar. 21, 2002) (Taloga Request for Review).

¹¹ Broaddus Request for Review at 1; Letter from Hugh Mixon, Broaddus Independent School District, to USAC, Schools and Libraries Division at 1 (dated Dec. 12, 2001).

¹² Broaddus Request for Review at 2.

¹³ FCC Form 471, GV/WFL BOCES Educational Technology Service (filed Jan. 17, 2000).

¹⁴ *Id.*

¹⁵ GV/WFL Funding Commitment Decision Letter. In its denial, USAC explained that the funding cap for Funding Year 2000 would not provide discounts for internal connections to applicants entitled to less than 82 percent discount under the discount matrix. *Id.*

¹⁶ Letter from Camille Sorenson, Genesee Valley/Wayne-Finger Lakes BOCES Educational Technology Services, to USAC, Schools and Libraries Division (filed Jun. 14, 2000).

¹⁷ Letter from USAC, Schools and Libraries Division, to Mary Ellen Darling, Genesee Valley/Wayne-Finger Lakes BOCES Educational Technology Service (dated Mar. 8, 2001).

GV/WFL's selected vendor was not an eligible telecommunications carrier.¹⁸ In its appeal to the Commission, GV/WFL maintains that the documentation provided to USAC showed that the fiber optic lines were used for data only and thus Internet access, not telecommunications services, was the appropriate service category for its funding request.¹⁹

7. We grant GV/WFL's appeal. We find that GV/WFL has presented sufficient evidence to show that it may have requested a service that did not have to be provided by an eligible telecommunications carrier, and thus, its application merits further review by USAC. The Eligible Services List for Funding Year 2000 indicated that an applicant could seek funding for a data communications network (or wide area network) for accessing the Internet as long as the network was provided over leased lines provided by an eligible telecommunications carrier or a non-common carrier.²⁰ We thus remand the underlying application to USAC and direct USAC to conduct a further inquiry to determine the actual nature of the services requested. If USAC finds that GV/WFL's request was in fact for Internet access, USAC shall continue to process GV/WFL's application for funding.

8. Grandville Public School District (Grandville). Grandville applied for funding for both Internet access and distance learning for Funding Year 2002.²¹ USAC denied the request in full, finding that distance learning must be provided by an eligible telecommunications provider and that Grandville had selected an ineligible telecommunications provider.²² In its appeal to USAC, Grandville asserted that it had applied for Internet access and not telecommunications services.²³ On appeal, USAC found that Grandville's request not only included Internet access but also distance learning, which, according to program rules, is categorized as telecommunications services.²⁴ Because distance learning must be provided by an eligible telecommunications carrier and Grandville had selected an ineligible telecommunications provider, USAC denied Grandville's appeal.²⁵ In its appeal to the Commission, Grandville seeks to correct its funding request to remove the reference to distance learning because Grandville was unable to purchase the equipment necessary to utilize the distance learning part of its request.²⁶

9. We grant Grandville's appeal and remand the underlying application to USAC to conduct a further inquiry to determine the actual nature of the services requested. If USAC finds that Grandville is not using the distance learning portion of the request and the request is only for Internet access, USAC shall fund the request since Internet access may be provided by a non-telecommunications carrier.²⁷ If USAC determines that Grandville is also using the funds for distance learning and the cost of distance

¹⁸ *Id.*

¹⁹ GV/WFL Request for Review.

²⁰ Schools and Libraries, Eligible Services List, http://www.universalservice.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_120299.pdf, at 36 (rel. Dec. 2, 1999).

²¹ FCC Form 471, Grandville Public School District (filed Jan. 16, 2002).

²² Grandville Funding Commitment Decision Letter.

²³ Letter from Barbara Hiemstra, Grandville Public School District, to USAC, Schools and Libraries Division (dated Sep. 17, 2002). On its FCC Form 470, however, Grandville requested both telecommunications service and Internet access. FCC Form 470, Grandville Public School District (posted Dec. 14, 2001).

²⁴ Letter from USAC, Schools and Libraries Division, to Barbara Hiemstra, Grandville Public School District (dated Mar. 6, 2003).

²⁵ *Id.*

²⁶ Grandville Request for Review.

²⁷ *Supra* para. 2.

learning can be separately allocated from the remaining Internet service bundle, USAC shall process the Internet access portion of Grandville's funding request and remove all ineligible portions from the funding request.²⁸ We thus waive section 54.504(c) of the Commission's rules to the extent that Grandville will need to amend its original FCC Form 471 application submitted to USAC.²⁹

10. *Taloga Independent School District 10 (Taloga)*. In its appeal to the Commission, Taloga asserts that, although its service provider would be providing a T1 line that would allow it to receive both Internet access and distance learning, it only sought funding for the Internet access portion of the service offering for Funding Year 2002.³⁰ Taloga claims that it requested the service in this manner because it was the most cost-effective means of securing both services for its school district.³¹ USAC denied the entire request, finding that it was for a telecommunication service, and that Taloga had not selected an eligible telecommunications carrier.³²

11. We grant Taloga's appeal and remand the underlying application to USAC to conduct a further inquiry to determine the actual nature of the services requested. If USAC finds that Taloga's requested service for eligible Internet access can be separately accounted for from the remaining service bundle, USAC shall process the Internet access portion of Taloga's funding request and remove all ineligible portions from the funding request. We thus waive section 54.504(c) of the Commission's rules to the extent that Taloga will need to amend its original FCC Form 471 application submitted to USAC.³³

12. Additionally, based on the facts and circumstances of these specific cases, we find that the complete rejection of these four applications is not warranted. We note that, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to program requirements. We therefore grant these four appeals and remand the underlying applications to USAC for further processing consistent with this order.³⁴ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.³⁵ 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. To ensure these issues are resolved expeditiously, we direct USAC

²⁸ See *Request for Review of the Decision of the Universal Service Administrator by Aiken County Public Schools, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-397612, et al., CC Docket 02-6, Order, 22 FCC Rcd 8735 (2007) (finding that, for 36 petitioners, good cause existed to permit petitioners to remove ineligible services from their funding requests).

²⁹ 47 C.F.R. § 54.504(c).

³⁰ Taloga Request for Review.

³¹ *Id.*

³² Taloga Funding Commitment Decision Letter.

³³ 47 C.F.R. § 54.504(c).

³⁴ We estimate that the appeals granted in this order involve applications for approximately \$51,662 in funding. We note that USAC has already reserved sufficient funds to address the outstanding appeals. 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.

³⁵ 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.

to complete its review of the applications listed in the Appendix and issue an award or denial based on a complete review and analysis no later than 90 days from release of this order.³⁶

13. 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 appeals 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 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

14. ACCORDINGLY, IT IS ORDERED that, 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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a) the Requests for Review as listed in the Appendix ARE GRANTED and ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

15. 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 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 section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c) IS WAIVED to the extent provided herein.

16. 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 application listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

³⁶ 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.

17. 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

Applicant Name	FCC Form 471 Number	Funding Year	Date Appeal Filed With Commission
Broaddus Independent School District Broaddus, Texas	214609	2001	Nov. 18, 2002
Genesee Valley/Wayne Finger Lakes Educational Technology Service Newark, New Jersey	200390	2000	Mar. 26, 2001
Grandville Public School District Grandville, Michigan	316707	2002	Apr. 16, 2003
Taloga Independent School District 10 Taloga, Oklahoma	249752	2002	Mar. 21, 2002