

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Canon-McMillan School District,
Canonsburg, PA, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-360219, 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 20 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denying funding because the applicants' invoice forms were untimely filed or not received by USAC.

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.

1 See Appendix. In this order, we use the term "appeals" to refer generally to requests for review or waiver that are related to decisions issued by USAC.

2 47 C.F.R. §§ 54.501-54.504.

3 See USAC website, Receive Your Funding Decision, http://www.universalservice.org/sl/applicants/step09/ (retrieved Aug. 11, 2008).

4 47 U.S.C. § 254(h)(5) - (7).

5 See USAC website, FCC Form 486 Filing Information, http://www.universalservice.org/sl/applicants/step10/form486-filing-information.aspx (retrieved Aug. 11, 2008).

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>6</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>7</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>8</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>9</sup> Service providers reimbursing applicants (billed entities) via the BEAR process must remit the amount authorized by USAC to the billed entity within 20 business days of receiving the reimbursement payment.<sup>10</sup> Since Funding Year 2003, the relevant invoice forms must be postmarked no later than 120 days after the date of the FCC Form 486 NL or 120 days after the last day to receive service, whichever is later.<sup>11</sup> An applicant may request an extension of the filing deadline.<sup>12</sup>

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Specifically, the FCC Form 486 must be filed to: (1) authorize the payment of invoices from the service provider(s); (2) indicate approval of Technology Plans, as required; and (3) indicate the status of compliance with CIPA (Pub.L. 106-554). *Id.*

<sup>6</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 Second Report and Order*); see also USAC website, Form 472 BEAR Filing Guidance, <http://www.sl.universalservice.org/reference/8bear.asp> (retrieved Oct. 28, 2008); USAC website, Invoice Filing Information USAC, <http://www.universalservice.org/sl/applicants/step11/> (retrieved Aug. 11, 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>7</sup> FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, available at [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>8</sup> FCC Form 474, Service Provider Invoice (SPI) Form, available at [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>9</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; see also *Schools Second Report and Order*, 18 FCC Rcd at 9217, para. 42.

<sup>10</sup> See 47 C.F.R. § 54.514(b); see also *Schools Second Report and Order*, 18 FCC Rcd at 9219, para.51.

<sup>11</sup> See USAC website, June 2002 Announcements, Invoicing Deadlines Extended, <http://www.universalservice.org/sl/tools/news-archive/2002/062002.asp#062002> (retrieved Aug. 11, 2008). Prior to Funding Year 2003, invoice deadlines were as follows: For Funding Year 1998, the invoice deadline was March 28, 2000. See USAC website, February 2000 Announcements, Final Payment Date for Year 1 Invoices Approaches, <http://www.universalservice.org/sl/tools/news-archive/2000/022000.asp#yrlinv> (retrieved Oct. 28, 2008). For Funding Year 1999, the invoice deadline was November 20, 2000. See USAC website, October 2000 Announcements, Reminder of November 20 Deadline for Submitting BEAR Forms and Service Provider Invoices for Year 2, <http://www.universalservice.org/sl/tools/news-archive/2000/102000.asp#102700> (retrieved Oct. 28, 2008). Funding Year 2000, the invoice deadline was January 31, 2002 or no later than 90 days after the date of the FCC Form 486 NL to the service provider. See USAC website, Funding Year 3 Disbursement Closeout Process, <http://www.universalservice.org/sl/tools/news-archive/2001/112001.asp#111301> (retrieved Oct. 28, 2008). For Funding Year 2001, the invoice deadline was December 9, 2002. See USAC website, December 2002 Announcements, Deadline for Invoices for FY 2001 Recurring Services, <http://www.universalservice.org/sl/tools/news-archive/2002/122002.asp#120302a> (retrieved Oct. 28, 2008). For Funding Year 2002, the invoice deadline was December 31, 2002. See USAC website, October 2003 Announcements, Two October Deadlines for Certain Applicants, <http://www.usac.org/sl/tools/news-archive/2003/102003.asp#100803> (retrieved Oct. 28, 2008).

<sup>12</sup> See <http://www.universalservice.org/sl/applicants/step11/invoice-deadlines-extension-requests.aspx> (retrieved Aug. 11, 2008).

### III. DISCUSSION

4. In this order, we grant 20 appeals of decisions by USAC denying funding because it found that the invoice forms, either the FCC Form 472 or the FCC Form 474, were untimely filed.<sup>13</sup> In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.<sup>14</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. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each request for reimbursement and to remit payment, if warranted, based on a complete review and analysis, no later than 90 calendar days from release of this order. For those applications where the appropriate form was not submitted to USAC previously, we direct USAC to solicit submission of the invoice form no later than 15 calendar days from the release of this order and to remit payment associated with the solicited invoice form, if warranted, no later than 90 calendar days from the receipt of the invoice form.

5. Eighteen appeals involve the untimely filing of the FCC Form 472 and two appeals involve the untimely filing of the FCC Form 474.<sup>15</sup> Some petitioners assert that staff changes or inadvertent errors or typographical errors by the applicant's staff resulted in incorrect information being submitted on the FCC Form 472 or failure to file the FCC Form 472 on a timely basis.<sup>16</sup> Several petitioners assert that they were confused about the funding year based on correspondence from USAC, which delayed or prevented the filing of the timely invoice forms.<sup>17</sup> Further, some applicants contend that they relied upon the service provider to add information to the form and submit the completed form to USAC and that the service provider failed to do so.<sup>18</sup> In one instance, because the service provider did

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<sup>13</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>14</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>15</sup> See Request for Waiver of Advanced Solutions, Inc., Canon-McMillan School District, Request for Waiver of Carrol County Public Library, Request for Review of Cimarron Municipal School District, Request for Waiver of Dalton Public Schools, Request for Waiver of Fostoria Community Schools, Request for Waiver of Hanover Community School Corporation, Request for Waiver of Jefferson County School Board, Request for Review of Jennings School District, Request for Waiver of Kalispell Public Schools, Request for Waiver of Leake and Watts Services, Inc., Request for Waiver of Maranacook Area Schools/School Union 42, Request for Waiver of New Castle Community School Corporation, Request for Waiver of Pitman Public School District, Request for Waiver of Radford City Public Schools, Request for Waiver of Tanana City School District, Request for Waiver of Tigerton School District, Request for Review of Walla Walla School District; Request for Review of Qwest Interprise America, Inc.

<sup>16</sup> See e.g., Request for Waiver of Advanced Solutions, Inc., Request for Waiver of Canon-McMillan, Request for Review of Cimarron Municipal School District, Request for Waiver of Dalton Public Schools, Request for Waiver of Fostoria Community Schools, Request for Waiver of Hanover Community School Corporation, Request for Waiver of Jefferson County School Board, Request for Review of Jennings School District of Jennings, Request for Waiver of Carrol County Public Library, Request for Waiver of Pitman Public School District, Request for Waiver of Radford City Schools, Request for Waiver of Coahoma Agriculture High School, Request for Waiver of Tanana City School District, and Request for Waiver of Tigerton School District.

<sup>17</sup> See e.g., Request for Waiver of Carrol County Public Library and Request for Waiver of Pitman Public School District.

<sup>18</sup> See e.g., Request for Waiver of Kalispell Public Schools, Request for Waiver of Leake and Watts, Inc., Request for Waiver of Maranacook/School Union 42, and Request for Waiver of New Castle Community School Corporation.

not install the equipment per the applicant's specifications, the applicant withheld the invoice form to ensure the service provider provided the services identified on its FCDL.<sup>19</sup> Finally, in one appeal, Qwest Interprise America, Inc. (Qwest) argues (in contrast to the other 19 appeals) that technical problems at USAC resulted in its FCC Form 474 not being received in a timely manner.<sup>20</sup>

6. Based on the facts and circumstances of these specific cases, we find that good cause exists to grant these appeals. Generally, these applicants claim that staff changes or inadvertent errors on the part of their staff resulted in the late filing or failure to file the FCC Form 472 or FCC Form 474. We believe that the petitioners have demonstrated that they made good faith efforts to comply with programmatic rules. We note that those tasked with working on E-rate applications are typically school administrators, technology coordinators, teachers and librarians who may have little experience with invoice requirements for the E-rate program. This may be particularly true of staff at small school districts or libraries. We expect that, as these schools and libraries continue to participate in the E-rate program, they will become more experienced with the invoice requirements of the program.

7. Moreover, we emphasize that these applicants missed a procedural deadline and did not violate a substantive rule. In the *Bishop Perry Order*, the Commission found that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.<sup>21</sup> This is especially true in these circumstances, where the applicants are at the end of the process and have already received service and complied with all other E-rate program rules to date.

8. Finally, we find that denying the petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. Requiring USAC to take these additional steps will not reduce or eliminate any invoice review procedures or program requirements that applicants must comply with to receive funding. Although the invoice deadline is an important element in helping the Commission guard against the waste of program funds, there is no evidence at this time in the record that the petitioners engaged in activity to defraud or abuse the E-rate program. We further note that granting these requests should have minimal effect on the Fund as a whole.<sup>22</sup>

9. We emphasize the limited nature of this decision. We recognize that filing deadlines are necessary for the efficient administration of the E-rate program. Although we grant these 20 appeals, our action here does not eliminate USAC's deadlines for filing the FCC Form 472 and the FCC Form 474. We continue to require E-rate applicants and service providers to submit complete and accurate

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<sup>19</sup> See Request for Waiver of Leake and Watts Services, Inc.

<sup>20</sup> Request for Review of Qwest Interprise America, Inc. at 3-4. Qwest provided documentation of USAC's acknowledgment of technical difficulties during the time period in which Qwest submitted its FCC Form 474. See Email from Chris Bianchino, Schools and Libraries Division of USAC, to Sandra Straub, Qwest Interprise America, Inc. (dated April 1, 2003) (acknowledging email problems around the time applicant claims it submitted its FCC Form 474).

<sup>21</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 21 FCC Rcd 5316, 5316-17, 5319-20, 5323, paras. 2, 9, 14 (2006) (*Bishop Perry Order*).

<sup>22</sup> We estimate that the appeals granted in this order involve applications for approximately \$725,489 in funding for Funding Years 1998-2004. 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.

information to USAC as part of the invoicing process. In addition, we note that, in the *Comprehensive Review NPRM*, the Commission initiated a proceeding to address the concerns raised by, among other things, improving the disbursement process for the E-rate program.<sup>23</sup>

10. 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 these appeals, 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. We remain 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

11. 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 authority delegated under 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 the Requests for Review and Requests for Waiver filed by the petitioners as listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration to the extent provided herein.

12. IT IS FURTHER 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 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 request for reimbursement and REMIT payment, if warranted, based on a complete review and analysis no later than 90 calendar days from release of this order or no later than 90 calendar days after the receipt of the appropriate invoice form as provided herein.

13. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>23</sup> *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11324-25, 11333-34, paras. 37-40, 60 (2005) (*Comprehensive Review NPRM*).

## APPENDIX

APPLICANT	APPLICATION NUMBER	FUNDING YEAR	TYPE OF APPEAL
Caldwell Alternative Center, Sacajawea Elementary School, Van Buren Elementary School (filed by Qwest Interprise America, Inc.) Caldwell, ID	233962, 234055, 234124	2001	Request for Review
Canon-McMillan School District Canonsburg, PA	360219	2003	Request for Waiver
Carrol County Public Library Westminster, MD	295856	2002	Request for Waiver
Cimarron Municipal School District Cimarron, NM	141892	1999	Request for Review
Dalton Public Schools Dalton, GA	190263	2000	Request for Waiver
Fostoria Community Schools Fostoria, OH	250699	2001	Request for Waiver
Fountain Hills Unified School District Fountain Hills, AZ	234583	2001	Request for Waiver
Grossmont Union High School District El Cajon, CA	301383	2002	Request for Waiver
Hanover Community School Corporation Cedar Lake, IN	170946, 184818, 185125	2000	Request for Waiver
Jefferson County School Board Monticello, FL	409122	2004	Request for Waiver
Jennings School District Jennings, MO	48706	1998	Request for Review
Kalispell Public Schools Kalispell, MT	346311	2003	Request for Waiver
Leake and Watts Services, Inc. Yonkers, NY	254883	2001	Request for Waiver
Maranacook Area Schools/School Union 42 Readfield, ME	231776, 231772	2001	Request for Waiver
New Castle Community School Corporation New Castle, IN	239900	2001	Request for Waiver
Pitman Public School District Pitman, NJ	267572	2001	Request for Waiver
Radford City Public Schools Radford, VA	421753	2004	Request for Waiver
Tanana City School District Tanana, AK	428140	2004	Request for Waiver
Tigerton School District Tigerton, WI	243943, 243627	2001	Request for Waiver
Walla Walla School District Walla Walla, WA	246595	2001	Request for Review