

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Colegio Nuestra Senora del Carmen)	File Nos. SLD-359532, 359494, <i>et al.</i>
Hatillo, Puerto Rico, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

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 address six appeals of decisions by the Universal Service Administrative Company (USAC) denying requests for funding under the schools and libraries universal service support mechanism, also known as the E-rate program, on the ground that the underlying applications violated the Commission's competitive bidding requirements.¹ As explained below, we find that, in five instances, the petitioners did not violate the Commission's competitive bidding rules.² We therefore grant these appeals. In one instance, we find that good cause exists to grant a limited waiver of section 54.511 of the Commission's competitive bidding rules.³ Accordingly, we remand the underlying applications associated with these appeals to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application and issue a decision no later than 60 calendar days from the release date 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.⁴ The Commission's rules provide that an eligible school, library, or consortium

¹ The list of applicants is attached as 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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.504, 54.511.

³ 47 C.F.R. § 54.511

⁴ 47 C.F.R. §§ 54.501-54.503.

that includes eligible schools and libraries must seek competitive bids for all services eligible for support.⁵ Applicants thus must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.⁶ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁷ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a Request for Proposal (RFP) available providing detail about the requested services.⁸ The RFP must be available to all potential bidders for the duration of the bidding process.⁹

3. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹⁰ The applicant must consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.¹¹ Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.¹² USAC assigns a funding request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.

4. *Price as a Primary Factor in Selecting a Bid.* Prior to Funding Year 2004, the Commission released only one order addressing an appeal of the requirement that price be the primary factor in selecting the winning bid.¹³ Specifically, in the *Tennessee Order*, released in 1999, the Commission determined that a competitive bidding process complies with program rules if price is taken into account

⁵ 47 C.F.R. § 54.504. An existing contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements. See 47 C.F.R. § 54.511(c).

⁶ 47 C.F.R. § 54.504(b).

⁷ *Id.*

⁸ See, e.g., Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (current FCC Form 470).

⁹ FCC Form 470.

¹⁰ 47 C.F.R. §§ 54.504(b)-(c).

¹¹ 47 C.F.R. § 54.511(a).

¹² See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (current FCC Form 471).

¹³ See *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734 (1999) (*Tennessee Order*). The Commission used two different phrases to discuss how price should be taken into account; it said price should be "a primary factor," but in discussing prior precedent, the order also said price should be "the primary factor." *Id.* at 13739-40, paras. 10-11. Subsequently, in the *Ysleta Order*, the Commission acknowledged that the "varying phraseology in the same decision created some ambiguity on this issue." See *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26406, 26429, para. 50 (2003) (*Ysleta Order*).

during bid selection and the contract is awarded to the most cost-effective bidder.¹⁴ The Commission further concluded that other factors, such as prior experience, personnel qualifications, and management capability, also may form a reasonable basis on which to evaluate whether an offering is cost-effective.¹⁵

5. Four years later, after the conclusion of the Funding Year 2003 competitive bidding process, the Commission released the *Ysleta Order*, in which it revised the policies established in the *Tennessee Order*.¹⁶ In the *Ysleta Order*, the Commission concluded that price must be the primary factor in selecting a winning bid.¹⁷ This policy differs from the direction given in the *Tennessee Order* in that schools are now required to have a separate “cost category” when evaluating bids, and that category must be given more weight than any other category.¹⁸ The Commission stated that, if, for example, a school assigns 10 points to reputation and 10 points to past experience, the school would be required to assign at least 11 points to price.¹⁹

6. *Pattern Analysis Procedure*. Among other things, USAC is responsible for administering the application process for the E-rate program.²⁰ Pursuant to this authority, USAC developed a procedure to detect applications that may be in violation of the Commission’s competitive bidding rules by searching for similar language used in FCC Forms 470 filed by other schools, libraries, and consortia that selected the same service provider through their competitive bidding processes.²¹ This procedure, described by USAC as “pattern analysis,” contemplates the possibility that a group of applicants, all with the same service provider, violated the competitive bidding rules.

7. In the *Academy of Careers Order*, released in May 2006, the Commission determined that USAC improperly denied requests for funding based on its “pattern analysis” procedure.²² The

¹⁴ See *Tennessee Order*, 14 FCC Rcd at 13737-39, paras. 7-9; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (stating that price should be the primary factor in selecting a bid, but applicants are given maximum flexibility to take service quality into account and may choose the offering that meets their needs most effectively and efficiently).

¹⁵ *Tennessee Order*, 14 FCC Rcd at 13739-40, para. 10; see also 47 C.F.R. §§ 54.504(b)(2)(vii), 54.511(a).

¹⁶ See *Ysleta Order*, 18 FCC Rcd at 26429, para. 50.

¹⁷ *Id.* This rule was originally codified in 2003. 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 (2003) (codifying 47 C.F.R. § 54.511(a)); see also *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (codifying 47 C.F.R. § 54.504(b)(2)(vii) and 47 C.F.R. § 54.504(c)(1)(xi)).

¹⁸ See *Ysleta Order*, 18 FCC Rcd at 26429, para. 50.

¹⁹ *Id.* at n.138.

²⁰ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25064-65, para. 12 (1998).

²¹ See *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, San Antonio, TX, et al.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5348, 5349, para. 3 (2006) (*Academy of Careers Order*).

²² *Id.* at 5350-51, para. 6.

Commission found that USAC should not stop its review after identifying a pattern in certain applications without sufficiently examining whether the Commission's rules were actually violated due to improper third-party participation in the competitive bidding process.²³ Additionally, the Commission required USAC to conduct further investigation and analysis prior to denying funding where USAC suspects that a service provider has improperly participated in an applicant's bidding process due to the results of its pattern analysis procedure.²⁴

8. *Requests for Review.* The petitioners submitted their FCC Forms 470 to USAC to initiate the competitive bidding process for eligible services under the E-rate program.²⁵ Subsequently, the petitioners entered into contracts with their respective service providers and submitted their FCC Form 471 applications for Funding Years 2003, 2004, or 2005 to USAC.²⁶ USAC denied funding to four petitioners – Colegio Nuestra Senora del Carmen (Colegio), The Mill School (Mill), Thornton Township High School District (Thornton), and Edgewood Independent School District (Edgewood) – because USAC found that they failed to use price as the primary factor in the vendor selection process.²⁷ USAC also denied funding to Long Branch Free Public Library (Long Branch), Pinon Unified School District (Pinon), and Mill after determining that their selected service providers improperly participated in their respective bidding processes.²⁸ USAC later affirmed these decisions on appeal.²⁹ The petitioners then

²³ *Id.*

²⁴ *Id.* at 5351, para. 7.

²⁵ FCC Form 470, Colegio Nuestra Senora del Carmen (posted Nov. 25, 2003); FCC Form 470, Long Branch Free Public Library (posted Dec. 20, 2001); FCC Form 470, Pinon Unified School District #4 (posted Nov. 6, 2003); FCC Form 470, The Mill School (posted Nov. 12, 2002); FCC Form 470, Thornton Township High School District 205 (posted Nov. 25, 2003); FCC Form 470, Edgewood Independent School District (posted Dec. 12, 2003).

²⁶ FCC Form 471, Colegio Nuestra Senora del Carmen (filed Feb. 4, 2004); FCC Form 471, Long Branch Free Public Library (filed Jan. 17, 2002); FCC Form 471, Pinon Unified School District #4 (filed Jan. 28, 2004); FCC Form 471, The Mill School (filed Feb. 3, 2003); FCC Form 471, Thornton Township High School District 205 (filed Feb. 2, 2004); FCC Form 471, Edgewood Independent School District (filed Jan. 30, 2004).

²⁷ Letter from USAC, Schools and Libraries Division, to Carmen Diaz, Colegio Nuestra Senora Del Carmen (dated Apr. 9, 2005); Letter from USAC, Schools and Libraries Division, to Anne Davis, The Mill School (dated Feb. 24, 2005); Letter from USAC, Schools and Libraries Division, to Larry Scaletta, Thornton Township High School District 205 (dated Nov. 16, 2005); Letter from USAC, Schools and Libraries Division, to J.J. McQuade, Edgewood Independent School District (dated Sept. 20, 2007). We note that Mill was also denied funding based on USAC's pattern analysis procedure, which is discussed in more detail below. *See infra* paras. 14-15.

²⁸ *See* Letter from USAC, Schools and Libraries Division, to Steve Huxhold, Pinon Unified School District #4 (dated May 10, 2005); Letter from USAC, Schools and Libraries Division, to Anne Davis, The Mill School (dated July 27, 2004). We note that during post-funding review, USAC determined that Long Branch's FCC Form 470 contained service provider contact information. Long Branch was then subject to a funding commitment adjustment by USAC, which rescinded Long Branch's funding commitment. *See* Letter from USAC, Schools and Libraries Division, to Ingrid Bruck, Long Branch Public Library (dated Nov. 3, 2006). In light of our decision herein, we direct USAC to discontinue recovery actions against Long Branch pending completion of its review of Long Branch's application on remand.

²⁹ *See* Letter from USAC, Schools and Libraries Division, to Ingrid Bruck, Long Branch Public Library (dated Mar. 7, 2007) (Long Branch Administrative Decision Letter); Letter from USAC, Schools and Libraries Division, to Steve Huxhold, Pinon Unified School District #4 (dated Sept. 19, 2005); Letter from USAC, Schools and Libraries Division, to Anne Davis, The Mill School (dated Feb. 24, 2005).

filed the instant requests for review with the Commission.³⁰

III. DISCUSSION

9. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC, we grant the petitioners' requests for review.³¹ As explained below, we find that the petitioners did not violate the Commission's competitive bidding rules.³² We discuss these groups of appeals separately below.

10. Price as a Primary Factor in Selecting a Bid. Four petitioners were denied funding because they failed to use price as the primary factor in the vendor selection process. Specifically, USAC rejected the funding requests of Colegio, Mill, Thornton, and Edgewood because they failed to give more weight to price in the competitive bidding process than to any other factor.³³

11. Consistent with our *Academia Order* precedent, we find that USAC improperly denied the petitioners' funding requests.³⁴ Here, as in that order, the petitioners initiated the vendor selection process prior to the release of the *Ysleta Order*.³⁵ Thus, as we found in *Academia Order*, USAC should have

³⁰ Letter from Carmen Diaz, Colegio Nuestra Senora del Carmen, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated June 8, 2005); Letter from Paul Sandler, The Mill School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Apr. 26, 2005); Letter from Ingrid Bruck, Long Branch Public Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Apr. 23, 2007); Letter from Steve Huxhold, Pinon Unified School District #4, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Nov. 18, 2005); Letter from Larry Scaletta, Thornton Township High School District 205, to Office of the Secretary, Federal Communications Commission (dated Jan. 13, 2006); Letter from Richard Bocanegra, Edgewood Independent School District, to Office of the Secretary, Federal Communications Commission (dated Nov. 16, 2007) (collectively, Requests for Review).

³¹ See 47 C.F.R. § 54.723; *infra* Appendix. We estimate that the appeals granted in this order involve applications for approximately \$3.2 million 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.

³² 47 C.F.R. §§ 54.504, 54.511.

³³ Letter from USAC, Schools and Libraries Division, to Carmen Diaz, Colegio Nuestra Senora Del Carmen (dated Apr. 9, 2005); Letter from USAC, Schools and Libraries Division, to Anne Davis, The Mill School (dated Feb. 24, 2005); Letter from USAC, Schools and Libraries Division, to Larry Scaletta, Thornton Township High School District 205 (dated Nov. 16, 2005); Letter from USAC, Schools and Libraries Division, to J.J. McQuade, Edgewood Independent School District (dated Sept. 20, 2007). We note that during post-funding review, USAC determined that Edgewood failed to provide documentation to indicate that price was the primary factor in the vendor selection process. Edgewood was then subject to a funding commitment adjustment by USAC, which rescinded Edgewood's funding commitment. In light of our decision herein, we direct USAC to discontinue recovery actions against Edgewood pending completion of its review of Edgewood's application on remand.

³⁴ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Academia Discipulos de Cristo, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 9210 (2006) (finding that USAC erroneously required applicants to give more weight to price in the competitive bidding process than to any other factor) (*Academia Order*).

³⁵ The *Ysleta Order* was released on December 8, 2003. See *Ysleta Order*, 18 FCC Rcd 26406. Mill initiated its competitive bidding process in 2002, and Colegio and Thornton initiated their competitive bidding processes in November 2003. Edgewood drafted and prepared its RFP before the *Ysleta Order* was released. See FCC Form

applied the standard the Commission articulated in the *Tennessee Order* by determining whether price was considered as a primary factor for vendor selection and whether the most cost-effective services were selected, not whether price was weighted the highest during bid evaluations.³⁶

12. The record shows that the petitioners provided documentation detailing the competitive bidding process, including bid requests, bid proposals, or cost evaluation criteria.³⁷ Specifically, we find that Colegio considered price among the five evaluation criteria in its vendor selection process and awarded the contract to NEVESEM, Inc., because NEVESEM complied with the school's requirements and the established evaluation criteria.³⁸ The record shows that Mill received two bids in response to its request for telecommunications services and evaluated price and previous experience before entering into a contract with the selected service providers.³⁹ Finally, we find that Thornton evaluated two criteria in its vendor selection process, i.e., reliability and cost, and ultimately selected the vendor with the lowest bid.⁴⁰ Thus, like the petitioners in the *Academia Order*, each petitioner evaluated the responsive bidders, using price as a primary consideration, and selected the vendor that offered the most cost-effective offering.⁴¹ Based on these factors, we find that the petitioners' competitive bidding processes did not violate program rules as they existed at that time. We therefore grant their requests for review.

13. With regard to Edgewood, we find that good cause exists to grant a limited waiver of section 54.511 of the Commission's rules.⁴² As noted above, the *Ysleta Order* was released on December 8, 2003.⁴³ Four days later, Edgewood released its information infrastructure RFP with evaluation criteria

470, The Mill School (posted Nov. 12, 2002); FCC Form 470, Colegio Nuestra Senora Del Carmen (posted Nov. 25, 2003); FCC Form 470, Thornton Township High School District 205 (posted Nov. 25, 2003); FCC Form 470, Edgewood Independent School District (posted Dec. 12, 2003).

³⁶ See *Academia Order*, 21 FCC Rcd at 9213-14, paras. 9-10; *Tennessee Order*, 14 FCC Rcd at 13737-13739, paras. 7-9; see also *supra* paras. 4-5.

³⁷ See Colegio Request for Review at Appendix 2; Mill Request for Review at 2; Thornton Request for Review at 1; Edgewood Request for Review at 3-6.

³⁸ See Colegio Request for Review at Appendix 4. Colegio reviewed the following criteria: (1) school's individual approach; (2) E-rate project reference; (3) technical capabilities; (4) K-12 experience; and (5) price.

³⁹ See Mill Request for Review at 2 and Exhibit B; see also Facsimile from Anne Davis, Florence Crittendon Services, on behalf of The Mill School, to Noel O'Flanagan, USAC, Schools and Libraries Division (dated July 17, 2003).

⁴⁰ See Thornton Request for Review at 1.

⁴¹ Colegio Request for Review at Appendices 2, 4; Mill Request for Review at 2; Facsimile from Larry Scaletta, Thornton Township High School District, to Robert Snieciniski, USAC, Schools and Libraries Division (dated Dec. 6, 2004).

⁴² 47 C.F.R. § 54.511. Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule 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*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). 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*, 418 F.2d at 1157. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁴³ See *Ysleta Order*, 18 FCC Rcd 26406.

that complied with the *Tennessee Order*.⁴⁴ Although the *Ysleta Order* was in effect when Edgewood released its RFP, we find that a limited waiver is warranted in this instance because the *Tennessee Order* was in effect while Edgewood drafted and prepared its RFP. Further, we find that Edgewood considered price as a primary factor in the vendor selection process, consistent with the standard articulated in the *Tennessee Order*.⁴⁵ We therefore waive section 54.511 of the Commission's rules, grant Edgewood's request for review, and remand the underlying application to USAC for further processing.

14. Pattern Analysis Procedure. USAC denied funding to Pinon, Mill, and Long Branch after determining that their selected service providers improperly participated in their respective bidding processes. Specifically, in the case of Pinon, USAC determined that documentation submitted during the selective review process displayed striking similarities to the FCC Forms 470 and competitive bidding responses among applicants selecting the same service provider.⁴⁶ In its request for review, Pinon argues, however, that the service provider was not involved in the submission of its FCC Form 470 or the competitive bidding process.⁴⁷ Pinon also states that the "similarities" among applications could be because other schools on the Navajo reservation have similar needs and requested similar services.⁴⁸

15. With regard to Mill, USAC found that similarities in Mill's FCC Form 470 and FCC Form 470 certification pages among applicants using the same service provider suggest service provider involvement in Mill's competitive bidding process.⁴⁹ In its request for review, Mill states that it was not aware of any impropriety involving its FCC Form 470 and certifications relating to its applications.⁵⁰ Mill further argues that USAC did not provide copies of the FCC Forms 470 of other applicants to show where the alleged similarities actually existed.⁵¹ Mill also claims that the existence of alleged similarities

⁴⁴ See *Tennessee Order*, 14 FCC Rcd at 13739-40, para. 10. See also FCC Form 470, Edgewood Independent School District (posted Dec. 12, 2003).

⁴⁵ See *Tennessee Order*, 14 FCC Rcd at 13739-40, para. 10. Edgewood evaluated three criteria in its vendor selection process: technical integrated solutions, references and past performance, and price. See Edgewood Request for Review at Exhibit B.

⁴⁶ See Letter from USAC, Schools and Libraries Division, to Steve Huxhold, Pinon Unified School District (dated May 10, 2005). USAC selects some applicants for a selective review to ensure that they are following certain E-rate program rules. Applicants are asked to provide the following information covering all of the billed entity's Forms 471 for the funding year: (1) documentation regarding their competitive bidding and vendor selection process; (2) documentation of their ability to pay their share of the cost of the products and services eligible for schools and libraries program support; (3) proof that they have obtained the (ineligible) hardware, software, professional development, electrical capacity or other retrofitting, and maintenance necessary to make effective use of the requested discounts. See USAC website, Schools and Libraries, Undergo Application Review, <http://www.universalservice.org/sl/applicants/step08/> (regarding the selective review process) (retrieved Aug. 20, 2008).

⁴⁷ Pinon Request for Review at 1.

⁴⁸ *Id.*

⁴⁹ See Letter from USAC, Schools and Libraries Division, to Anne Davis, The Mill School (dated July 27, 2004). In the past, after identifying applications that contained similar language through its "pattern analysis" procedure, USAC typically informed an applicant that "similarities in Forms 470 among applicants with this vendor indicate that the vendor was improperly involved in the competitive bidding and vendor selection process," and rejected the applicant's funding request. See *Academy of Careers Order*, 21 FCC Rcd at 5352, n.13. In most cases, no other detail concerning a violation of the Commission's rules was provided to the applicant. *Id.* at n.14.

⁵⁰ Mill Request for Review at 3.

alone is not sufficient to support USAC's finding that Mill relinquished control over the application process to the vendors.⁵²

16. In the case of Long Branch, USAC found that similarities in the cited FCC Form 470 and Item 12 descriptions of other applicants who selected the same service provider implied service provider involvement in Long Branch's competitive bidding process.⁵³ In its request for review, Long Branch argues that the library did not surrender control of the bidding process to a service provider.⁵⁴ Long Branch asserts that all bids were received by the library and that the library selected the service providers.⁵⁵ Long Branch also maintains that no service provider contact information appears on the establishing FCC Form 470.⁵⁶

17. Consistent with precedent, we grant the requests for review filed by Pinon, Mill, and Long Branch.⁵⁷ Here, as with the appeals resolved in the *Academy of Careers Order*, USAC denied the petitioners' requests for funding based on its "pattern analysis" procedure without sufficiently examining whether the Commission's rules were actually violated due to improper third-party participation in the competitive bidding process.⁵⁸ We therefore remand these applications to USAC consistent with the Commission's direction provided in the *Academy of Careers Order*.⁵⁹

18. Therefore, based on the record before us, we find that five of the petitioners did not violate the Commission's competitive bidding rules, and we waive section 54.511 of the Commission's rules with respect to the sixth petitioner.⁶⁰ In addition, at this time, there is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements. Accordingly, we grant these appeals and remand the underlying applications to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.⁶¹ 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. We direct USAC to complete its review of these applications and issue an award or denial

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Long Branch Administrative Decision Letter.

⁵⁴ Long Branch Request for Review at 1.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See *Academy of Careers Order*, 21 FCC Rcd 5348.

⁵⁸ *Id.* at 5349-52, paras. 6-8.

⁵⁹ *Id.* at 5351-52, paras. 7-8.

⁶⁰ 47 C.F.R. § 54.511.

⁶¹ 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.

based on a complete review and analysis no later than 60 calendar days from the release date of this order.⁶²

19. 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 herein, 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.

IV. ORDERING CLAUSES

20. ACCORDINGLY, IT IS 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 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, 54.722(a), that the requests for review filed by Colegio Nuestra Senora del Carmen on June 8, 2005, Long Branch Free Public Library on April 23, 2007, The Mill School on April 26, 2005, Pinon Unified School District on November 18, 2005, Thornton Township High School District 205 on January 13, 2006, and Edgewood Independent School District on November 16, 2007, ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

21. 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 authority delegated in 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 54.511 of the Commission's rules, 47 C.F.R. § 54.511, IS WAIVED to the limited extent provided herein.

22. 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 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, 54.722(a), that USAC SHALL DISCONTINUE its recovery actions against Long Branch Free Public Library and Edgewood Independent School District.

23. 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 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, 54.722(a), that USAC SHALL COMPLETE its review of each remanded application and SHALL ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.

⁶² 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.

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

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX

Applicant	Application Number(s)	Funding Year	Date Filed
Colegio Nuestra Senora del Carmen Hatillo, PR	359532 359494	2003	June 8, 2005
Edgewood Independent School District San Antonio, TX	414366	2004	November 16, 2007
Long Branch Free Public Library Capitol Heights, MD	329836	2002	April 23, 2007
The Mill School Baltimore, MD	354229 347420 347435	2003	May 20, 2005
Pinon Unified School District #4 Pinon, AZ	402870	2004	February 9, 2006
Thornton Township High School District 205 South Holland, IL	393315	2005	September 15, 2006