

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of the
Decisions of the
Universal Service Administrator by
Eagle Hill School
Hardwick, Massachusetts
Italian Home for Children
Jamaica Plain, Massachusetts
Rural Alaska Community Action Program, Inc.
Anchorage, Alaska
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-84941
File No. SLD-558248
File Nos. SLD-451855, 501948
CC Docket No. 02-6

ORDER

Adopted: October 20, 2009

Released: October 20, 2009

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order we deny requests for review filed by Eagle Hill School (Eagle Hill), Italian Home for Children (Italian Home), and Rural Alaska Community Action Program (Rural Alaska) 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).¹ We uphold USAC’s decisions

¹ In this order we use the term “appeal” generically to 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). See Letter from Margaret Hurley, on behalf of Eagle Hill School, to Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 18, 2001) (Eagle Hill Request for Review); Letter from Ross Wheadon, on behalf of Italian Home for Children, to Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 5, 2007) (Italian Home Request for Review); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed July 13, 2006); Letter from Diane Mathisen, Rural Alaska Community Action Program, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 12, 2006) (collectively, Rural Alaska Requests for Review).

denying funding to these applicants because the locations at issue were ineligible for support under the E-rate program.²

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.³ Only eligible applicants may seek support for eligible services.⁴ When USAC reviews an application and identifies an ineligible entity seeking support, it will deny funding for the requested service. Congress defined the scope of entities eligible for support as elementary and secondary schools, as defined by the Elementary and Secondary Education Act of 1965,⁵ and as libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).⁶ Both definitions rely on the standards set by each individual state.

3. Some internal connections within an eligible school or library may not be eligible for E-rate support. In the *Universal Service First Report and Order*, the Commission stated that “a given service is eligible for support as a component of the institution’s internal connections only if it is necessary to transport information all the way to individual classrooms.”⁷ The Commission elaborated on this policy in

² Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (dated Jan. 5, 2001) (Eagle Hill Commitment Adjustment (COMAD) Letter); Letter from USAC, Schools and Libraries Division, to Ross Wheadon, Italian Home for Children (dated Sept. 11, 2007) (Italian Home Funding Denial); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated May 10, 2006); Letter from USAC, Schools and Libraries Division, to Diane Mathisen, Rural Alaska Community Action Program, Inc. (dated Oct. 16, 2006) (collectively, Rural Alaska Appeal Decisions).

³ 47 C.F.R. §§ 54.501-503.

⁴ See 47 C.F.R. § 54.501(b)-(d); USAC website, Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at 3-4 (FCC Form 471 Instructions) (explaining that only schools and libraries meeting statutory eligibility standards may apply for support for eligible services), http://www.universalservice.org/res/documents/sl/pdf/471i_fy05.pdf (last visited Oct. 20, 2009).

⁵ See 47 U.S.C. § 254(h)(7)(A). The definitions of elementary and secondary schools are the definitions of those terms created by each individual state. 20 U.S.C. § 7801(18), (38). Specifically, the term “elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that the term does not include any education beyond grade 12. 20 U.S.C. § 7801(20), (38). In addition, the statute excludes schools that have endowments of more than \$50 million or operate for profit. See 47 U.S.C. § 254(h)(4).

⁶ See 47 U.S.C. § 254(h)(4). In addition, the library must have funding independent from any school, and may not operate as a for-profit business. 47 C.F.R. § 54.501(c). The LSTA states that a “library” may include a “private library or other special library, but only if the State ... determines that the library should be considered a library for the purposes” of the LSTA. 20 U.S.C. § 9122(1)(E).

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9017-18, 9021 at para. 459 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); see also *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is “not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings . . .”⁸ Consistent with these orders, internal connections to dormitory rooms have been found to be ineligible for support under the E-rate program.⁹ Specifically, in the *Anderson School Order* the Bureau stated that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms.¹⁰

4. *Eagle Hill Request for Review.* Although USAC initially approved Eagle Hill’s funding year 1998 request for internal connections to individual student dormitory rooms,¹¹ a subsequent review led USAC to find Eagle Hill ineligible for E-rate funding. Thus, USAC sought recovery of the \$77,430 it had disbursed to Eagle Hill for internal connections.¹² In its request for review, Eagle Hill states that it asked USAC whether E-rate program rules permitted discounts on internal connections for reaching dormitory rooms at its school, since its school serves children with learning disabilities and that structured study hall periods are held in the children’s dormitories for a minimum of two hours each night.¹³ Eagle Hill explained to USAC that, because students are required to be in their rooms during those periods and the regular dormitory counselor supervisors are joined by paid teachers, the dormitory rooms should be treated as classrooms for purposes of funding under the E-rate program.¹⁴ Eagle Hill further asserts that USAC informed Eagle Hill that Eagle Hill could argue that the dormitories are “acting” classrooms during the two hours per evening and, therefore, should be eligible for E-rate support.¹⁵

5. *Italian Home Request for Review.* During a routine Program Integrity Assurance review of Italian Home’s funding year 2007 request, USAC asked Italian Home what percentage of the dollars in

⁸ *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; see also 47 C.F.R. § 54.506.

⁹ *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*). The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. The term “Bureau” in this order refers to the Common Carrier Bureau prior to the change in 2002, and to the Wireline Competition Bureau after the change.

¹⁰ *Id.* at 25612, para. 6. In addition, pursuant to the Commission’s guidance on permissible funding for internal connections, E-rate funding has been denied for a teachers’ center, despite its occasional use for student classroom instruction. See *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002).

¹¹ See Letter from USAC, Schools and Libraries Division, to Chris Hynes, Eagle Hill School (Feb. 9, 1999).

¹² See Eagle Hill COMAD Letter.

¹³ See Email from EHSDevel@aol.com to Question@slcfund.org (dated Apr. 17, 1998).

¹⁴ *Id.*

¹⁵ See Email from Question@slcfund.org to EHSDevel@aol.com (dated Apr. 10, 1998). Specifically, the USAC employee directed Eagle Hill in the email to “indicate [its] unique situation as an attachment to” its FCC Form 471 application. *Id.* Based on the record, it does not appear that Eagle Hill provided such an attachment to its FCC Form 471.

its funding request were for telecommunications and Internet access services for dormitory or residence rooms.¹⁶ When Italian Home replied that 81 percent was associated with its four residential programs and 19 percent was associated with its day school program,¹⁷ USAC determined that the 81 percent associated with its residential programs was ineligible for E-rate program support and directed Italian Home to remove those expenses or explain why funding should be granted for those services.¹⁸ Italian Home responded that the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, thus 100 percent of its services should be eligible for E-rate support.¹⁹ USAC, however, only granted Italian Home discounts on the 19 percent of the purchases associated with its day school program.²⁰ In its request for review, Italian Home asserts that its student population consists of emotionally disturbed and learning disabled children ages five to twelve who require 24-hour per day care.²¹ Italian Home acknowledges that it is primarily a residential facility and that the children in its four residential programs live in three separate buildings at two locations.²² Italian Home again contends, as it did in its response to USAC, that, because the Commonwealth of Massachusetts had deemed 100 percent of Italian Home as an educational facility, 100 percent of its services should be eligible for E-rate support.²³

6. *Rural Alaska Requests for Review.* USAC denied Rural Alaska's funding year 2005 and 2006 requests for E-rate discounts for its Head Start, pre-kindergarten programs after finding that the state of Alaska did not define its elementary and secondary schools to include pre-kindergarten entities, such as the Head Start programs.²⁴ In its request for review, Rural Alaska argues that the early education provided through its Head Start program is a vital part of elementary education in Alaska.²⁵ It does not, however,

¹⁶ Italian Home Request for Review, Attachment 3 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 11, 2007)). USAC performs a Program Integrity Assurance review to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, Program Integrity Assurance, <http://www.sl.universalservice.org/reference/6pia.asp> (last visited Oct. 20, 2009).

¹⁷ Italian Home Request for Review, Attachment 4 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 11, 2007) (Italian Home June 11 Letter)).

¹⁸ See Italian Home Request for Review, Attachment 5 (Letter from Sasha Tyndale, USAC, to Ross Wheadon, Italian Home for Children, at 1 (dated June 12, 2007)).

¹⁹ *Id.*, Attachment 6 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 12, 2007) (Italian Home June 12 Letter)).

²⁰ See Italian Home Funding Denial.

²¹ See *id.*, Attachment 2 (Letter from Ross Wheadon, Italian Home for Children, to Sasha Tyndale, USAC, at 1 (dated June 6, 2007)).

²² *Id.*, Attachment 4 (Italian Home June 11 Letter).

²³ *Id.*, Attachment 6 (Italian Home June 12 Letter).

²⁴ See Rural Alaska Appeal Decisions at 2; see also USAC website, <http://www.usac.org/sl/applicants/step01/non-traditional-k-12/k-12-eligibility-table.aspx> (last visited Oct. 20, 2009).

²⁵ See Rural Alaska Requests for Review at 1.

address the specific issue of whether its programs, as determined by state law, are eligible for discounts under the E-rate program.²⁶

III. DISCUSSION

7. We deny the petitioners' requests for review and uphold USAC's decisions denying funding to these applicants because the locations at issue were ineligible for E-rate program support. As indicated above, consistent with the Commission's holdings with respect to internal connections funding, internal connections to student dormitory rooms have been found to be ineligible for E-rate support.²⁷ Thus, consistent with our precedent, we find that Eagle Hill's use of a dormitory room for tutoring for two hours a night does not qualify it to receive E-rate discounts for internal connections.²⁸ Similarly, Italian Home does not qualify for E-rate discounts for its residential facilities. Italian Home asserts that the Commonwealth of Massachusetts has held that its entire program is eligible for E-rate support.²⁹ Although Congress has delegated to the states discretion over which entities in the state provide primary or secondary education and are thus eligible to apply for support under the E-rate program,³⁰ the determination of which locations within a facility – classrooms or non-classroom locations – are eligible for support falls under the authority of the Commission.³¹ Thus, as discussed above, we find that the provision of discounted services for residential facilities is inconsistent with the Commission's E-rate rules.³² Accordingly, we deny Eagle Hill's and Italian Home's requests for review.

8. Rural Alaska misunderstands the criteria for eligibility, as explained above.³³ Although Rural Alaska asserts that early education provided by the Head Start program is a vital part of elementary education in Alaska, Head Start programs are only eligible in Alaska if the state defines elementary education to include these programs.³⁴ In its appeal decisions, USAC correctly observed that Alaska did not define elementary education to include Head Start programs.³⁵ Therefore, we affirm USAC's decision to deny E-rate program funding to Rural Alaska.

²⁶ See *supra* para. 2.

²⁷ See *supra* para. 3.

²⁸ We note that the Commission has previously concluded that "in certain limited instances, the use of telecommunications services offsite would . . . be integral, intermediate, and proximate to the education of students . . . and thus, would be considered to be an educational purpose." *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, 9208-09, paras. 17-19 (2003). We find, however, that providing service to dormitories in the manner described here is not one of those exceptional cases.

²⁹ See *supra* para. 5.

³⁰ See *supra* note 5.

³¹ See, e.g., *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd. at 5440, para. 209 (concerning the eligibility of non-instructional buildings).

³² See *supra* para. 3.

³³ See *supra* para. 2.

³⁴ *Id.*

³⁵ See Rural Alaska Appeal Decisions.

IV. ORDERING CLAUSES

9. 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 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), that the requests for review filed by Eagle Hill School, Italian Home for Children, and Rural Alaska Community Action Program, Inc. ARE DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

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