

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Review of Decisions of the)	
Universal Service Administrator by)	
)	
Hancock County School District)	File Nos. SLD-459271, <i>et al.</i>
New Cumberland, West Virginia, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

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 seven appeals of decisions by the Universal Service Administrative Company (USAC) denying applications for discounted telecommunications services under the schools and libraries universal service support mechanism (also known as the E-rate program) because the applicants' service providers were not telecommunications carriers, as required by program rules.¹

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,

¹ See Letter from Nathaniel Hawthorne, on behalf of Hancock County School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 97-21 (filed Sept. 19, 2005) (Hancock Request for Review); Letter from Nathaniel Hawthorne, on behalf of Holgate School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 97-21, 02-6 (filed Oct. 16, 2006) (Holgate Request for Review); Letter from Nathaniel Hawthorne, on behalf of Mel Blount Youth Home, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 97-21 (filed Mar. 17, 2006) (Mel Blount Request for Review); Letter from Nathaniel Hawthorne, on behalf of Nicholas County School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 97-21 (filed Oct. 16, 2003) (Nicholas Request for Review); Letter from Nathaniel Hawthorne, on behalf of Pleasants County School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 97-21 (filed May 19, 2006) (Pleasants Request for Review); Letter from Bruce Kelly, on behalf of Questa Independent Schools, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 97-21 (filed May 15, 2001) (Questa Request for Review); Letter from Margaret O'Brien, Seven Hills Classical Academy, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 14, 2007) (Seven Hills Request for Review). In this order, we use the term "appeals" to generically 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).

and internal connections.² Applicants may obtain discounts on Internet access and internal connections irrespective of whether they purchase those offerings from telecommunications or non-telecommunications carriers.³ To receive E-rate discounts on “telecommunications services,” however, applicants must purchase those services from entities that are “telecommunications carriers.”⁴ 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.”⁵

3. *Requests for Review.* All seven petitioners—Hancock School District (Hancock), Holgate School District (Holgate), Mel Blount Youth Home (Mel Blount), Nicholas County School District (Nicholas), Pleasants County School District (Pleasants), Questa Independent Schools (Questa), and Seven Hills Classical Academy (Seven Hills)—ordered telecommunications services but did not receive their services from telecommunications carriers.⁶ USAC rejected six of the funding requests and sought recovery of funds disbursed to the seventh on the grounds that all seven applicants sought telecommunications services from service providers that were not telecommunications carriers, as required by program rules.⁷

² 47 C.F.R. §§ 54.501-54.503.

³ See 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).

⁴ See 47 U.S.C. § 254(h)(1)(B); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9177-78, 9005-23, 9084-90, paras. 589-600 (1997) (*Universal Service First Report and Order*); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5413-14, paras. 163-164 (1997) (*Universal Service Fourth Reconsideration Order*). Applicants may receive E-rate support if they use non-telecommunications providers for providing voice mail, Internet access, and installation and maintenance of internal connections, but not for providing telecommunications services. See 47 C.F.R. § 54.517.

⁵ 47 U.S.C. §§ 153(44), (46); see *Universal Service 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 Contact Search, http://www.sl.universalservice.org/Forms/SPIN_Contact_Search.asp (last visited Oct. 20, 2009) (USAC Service Provider List).

⁶ Specifically, Holgate, Mel Blount, Nicholas, and Pleasants, applied for cellular service. FCC Form 471, Holgate School District (filed Feb. 13, 2006); FCC Form 471, Mel Blount Youth Home (filed Feb. 17, 2005); FCC Form 471, Nicholas County School District (filed Mar. 7, 2003); FCC Form 471, Pleasants County School District (filed Feb. 15, 2006). Hancock County applied for paging service. FCC Form 471, Hancock County School District (filed Feb. 17, 2005). Questa and Seven Hills do not indicate what type of telecommunications services they purchased. FCC Form 471, Questa Independent Schools (filed Apr. 14, 1998); FCC Form 471, Seven Hills Classical Academy (filed Feb. 24, 2006).

⁷ See Letter from USAC, Schools and Libraries Division, to Linda Alexander, Hancock School District at 7 (dated Sept. 8, 2005); Letter from USAC, Schools and Libraries Division, to Currie Sutton, Holgate School District at 5 (dated Sept. 19, 2006); Letter from USAC, Schools and Libraries Division, to Annie Jackson, Mel Blount Youth Home at 5 (dated Jan. 25, 2006); Letter from USAC, Schools and Libraries Division, to Currie Sutton, Nicholas County School District at 6 (dated Aug. 25, 2003); Letter from USAC, Schools and Libraries Division, to Currie Sutton, Pleasants County School District at 8 (dated Apr. 26, 2006); Letter from USAC, Schools and Libraries Division, to Joseph Aragon, Questa Independent School District at 4 (dated Apr. 17, 2001); Letter from USAC, Schools and Libraries Division, to Johana Sand, Seven Hills Classical Academy at 5 (dated Oct. 24, 2006); see also USAC Service Provider List.

4. In their appeals to the Commission, the petitioners claim that USAC inappropriately denied their requests for funding. Holgate, Mel Blount, and Pleasants argue that the Commission's rules do not require that cellular service be provided by a telecommunications carrier on a common carriage basis.⁸ Hancock asserts that there is no requirement that paging service be provided by telecommunications carriers.⁹ Additionally, Hancock, Mel Blount, and Pleasants County assert that their providers are resellers and that resellers do not have to be common carriers.¹⁰ Questa contends that it should receive funding because it relied on USAC's approval of its Service Provider Identification Number (SPIN) change request as confirmation that its new provider of telecommunications services was a telecommunications carrier.¹¹ Nicholas does not address the issue of the status of its carrier but rather states that its provider is authorized to resell cellular service and that "the FCC mandates that resale of cellular service is allowed to occur."¹² Lastly, Seven Hills explains that, while USAC denied it funding because the service provider listed on its application was not a telecommunications carrier, it actually received service from a different provider.¹³ Neither Seven Hills nor the USAC website provides any evidence that the second provider was or is a telecommunications carrier. Rather, Seven Hills simply states that Seven Hills is a new charter school for which this funding is vital.¹⁴

III. DISCUSSION

5. We deny the petitioners' appeals. As explained above, program rules require that applicants seeking telecommunications services must obtain such services from telecommunications carriers. Non-telecommunications carriers are only eligible for E-rate support for providing voice mail, Internet access, and installation and maintenance of internal connections and cannot receive E-rate support for providing telecommunications service.¹⁵ Contrary to the assertions of Holgate, Mel Blount, Pleasants, and Hancock, cellular service and paging service are clearly listed as telecommunications services in the relevant E-rate Eligible Services Lists, and therefore, are subject to the Commission's requirements regarding providers of telecommunications services.¹⁶ In addition, the relevant Eligible Services Lists and the relevant FCC Form 471 instructions for all petitioners explicitly stated that telecommunications

⁸ Holgate Request for Review at 2-3; Mel Blount Request for Review at 4; Pleasants County Request for Review at 3-4.

⁹ Hancock Request for Review at 3.

¹⁰ Hancock Request for Review at 4; Mel Blount Request for Review at 4; Pleasants County Request for Review at 4.

¹¹ See Questa Request for Review at 1.

¹² See Nicholas Request for Review at 2.

¹³ See Letter from Margaret O'Brien, Seven Hills Classical Academy, to USAC, Schools and Libraries Division at 1-2 (dated Feb. 26, 2007). Seven Hills' appeal to the Commission focuses solely on the issue of the timeliness of its appeal to USAC. See Seven Hills Request for Review at 1-2. However, as discussed below, even if Seven Hills' appeal to USAC had been timely filed, we deny its appeal on the merits.

¹⁴ See Seven Hills Request for Review at 2.

¹⁵ See *supra* para. 2; 47 C.F.R. §§ 54.502, 54.517.

¹⁶ See, e.g., *Release of Funding Year 2005 Eligible Services List for Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Public Notice, 19 FCC Red 20221, 20225, 20232 (2004) (*2005 ESL Public Notice*).

services could only be obtained from telecommunications carriers.¹⁷ In evaluating the underlying applications, USAC determined that, although the services sought were telecommunications services, none of the service providers at issue were telecommunications carriers. None of the petitioners offers any evidence to indicate that they received their telecommunications services from telecommunications carriers.¹⁸ Accordingly, based on the record before us, we affirm USAC's decisions that the petitioners' service providers were not telecommunications carriers, as required by program rules.

IV. ORDERING CLAUSES

6. 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 listed in the Appendix ARE DENIED.

7. 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

¹⁷ *Id.* at 20222-23 ("Eligibility Requirements for All Telecommunications Services: To be eligible for support, Telecommunications Services must be provided by an eligible telecommunications provider, that is, one who provides telecommunications services on a common carrier basis."); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB Approval No. 3060-0806 at 23 (FCC Form 471 Instructions) (November 2004) ("telecommunications services may be obtained only from telecommunications companies who provide those telecommunication services on a common carriage basis. To be a telecommunications carrier, the carrier must (1) allow the customer to transmit intelligence of its own design and choosing and (2) provide the service to the general public (hold itself out to serve indifferently all potential users) for a fee.").

¹⁸ *See supra* para. 4; Hancock Request for Review; Holgate Request for Review; Mel Blount Request for Review; Nicholas Request for Review; Pleasants Request for Review; Questa Request for Review; Seven Hills Request for Review.

APPENDIX

Requests for Review

Applicant	Application Number	Funding Year	Date Request for Waiver or Review Filed
Hancock County School District New Cumberland, WV	459271	2005	Sept. 19, 2005
Holgate School District Holgate, OH	508711	2006	Oct. 16, 2006
Mel Blount Youth Home Vidalia, GA	465423	2005	Mar. 17, 2006
Nicholas County School District Summersville, WV	341461	2003	Oct. 16, 2003
Pleasants County School District Saint Marys, WV	515003	2006	May 19, 2006
Questa Independent School District Questa, NM	102455	1998	May 15, 2001
Seven Hills Classical Academy Bloomington, MN	525283	2006	May 14, 2007