

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Iosco Regional Educational Service Agency
Tawas City, Michigan
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-108653, 108654,
108813, 108998, 109674, 120468,
125105
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 appeals of decisions by the Universal Service Administrative Company (USAC) seeking recovery of funding disbursed to Iosco Regional Educational Service Agency (Iosco) for discounted services under the schools and libraries universal service mechanism, also known as the E-rate program. As discussed below, we find that Iosco violated the Commission's rules by failing to pay the full non-discounted portion of the services received from its service provider, Local Internet Services, Inc. (LSI), and by using LSI as a consultant during the competitive bidding process.

1 Letter from Ronald Stec, Business Manager, Iosco Educational Service Agency (Iosco), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 19, 2004) (Request for Review for File No. SLD-108653); Letter from Ronald Stec, Business Manager, Iosco, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 19, 2004) (Request for Review for File No. SLD-108654); Letter from Ronald Stec, Business Manager, Iosco, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 19, 2004) (Request for Review for File No. SLD-108813); Letter from Ronald Stec, Business Manager, Iosco, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 19, 2004) (Request for Review for File No. SLD-108998); Letter from Ronald Stec, Business Manager, Iosco, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 19, 2004) (Request for Review for File No. SLD-109647); Letter from Ronald Stec, Business Manager, Iosco, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 19, 2004) (Request for Review for File No. SLD-120468); Letter from Ronald Stec, Business Manager, Iosco, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 19, 2004) (Request for Review for File No. SLD-125105) (collectively Requests for Review). 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 See infra paras. 3-4.

Accordingly, we direct Iosco to reimburse USAC for all E-rate program funds Iosco received for the relevant funding requests for funding years 1998 and 1999.

II. BACKGROUND

2. *E-rate Program Rules and Requirements.* 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 The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support.⁴

3. In accordance with the Commission's competitive bidding rules, applicants 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.⁵ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁶ 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.⁷ The RFP must be available to all potential bidders for the duration of the bidding process.⁸ To ensure a fair and open competitive bidding process, the Commission has interpreted its competitive bidding requirements to prohibit schools or libraries from designating as their E-rate program contact person on their FCC Form 470 anyone affiliated with any service provider competing to serve the applicant.⁹

4. In addition, the Commission's rules provide that eligible schools and libraries must pay the full non-discounted portion of the services or products purchased with E-rate discounts.¹⁰ In the *Universal Service First Report and Order*, the Commission determined that requiring schools and

³ 47 C.F.R. §§ 54.501-54.503.

⁴ 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).

⁵ 47 C.F.R. § 54.504(b).

⁶ *Id.*

⁷ *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).

⁸ *See* FCC Form 470.

⁹ *See* 47 C.F.R. §§ 54.504(a)-(b), 54.511; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, 9078-79, paras. 480, 575-77 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *see also Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033 (2000) (*Mastermind Order*).

¹⁰ 47 C.F.R. § 54.523.

libraries to pay a share of the cost encourages them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively.¹¹

5. *Iosco's Requests for Review.* In funding years 1998 and 1999, Iosco applied for and was granted E-rate discounts for telecommunications services, Internet access, and internal connections.¹² In November 2002, however, USAC audited Iosco's applications for those years and found numerous rule violations.¹³ Most significantly, USAC found that, according to LSI's invoices, Iosco failed to pay the full amount of the discounted price for the E-rate services it purchased from LSI, and Iosco's consultant, who signed its FCC Form 470 applications, was also an employee of LSI.¹⁴ USAC's audit also found that Iosco used some of the services it purchased with an E-rate discount for pre-kindergarten and adult education programs, which are not defined as elementary or secondary education by the state of Michigan, and thus, not eligible for E-rate program discounts.¹⁵ In April 2003, based on its findings, USAC sent seven letters to Iosco requesting that it reimburse USAC \$142,413 for the E-rate funding it received for five applications for funding year 1998 (due to Iosco's failure to pay the discounted price of

¹¹ *Universal Service First Report and Order*, 12 FCC Rcd at 9036, para. 493. In 2005 in the *Schools and Libraries Fifth Report and Order*, the Commission held that beneficiaries should pay the discounted price of eligible services within 90 days after delivery of service. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15816, para. 24 (2004) (*Schools and Libraries Fifth Report and Order*). Accordingly, the Commission clarified that a failure to pay more than 90 days after completion of service presumptively violates the rule that the beneficiary must pay its share. *Id.* The Commission determined that allowing schools and libraries to delay for an extended time their payment for services would subvert the intent of our rule that the beneficiary must pay, at a minimum, ten percent of the cost of supported services. *Id.* Thus, the Commission concluded that all funds disbursed should be recovered for any funding requests in which the beneficiary failed to pay its non-discounted share. *Id.*

¹² See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Feb. 18, 1999) (Funding Commitment Decision Letter (FCDL) for File No. SLD-108654); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Feb. 18, 1999) (FCDL for File No. SLD-108813); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Feb. 18, 1999) (FCDL for File No. SLD-108998); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Aug. 6, 1999) (FCDL for File No. SLD-108653); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Oct. 29, 1999) (FCDL for File No. SLD-109647); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Hathaway, Iosco Intermediate School District (dated Sept. 14, 1999) (FCDL for File No. SLD-120468); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Hathaway, Iosco Intermediate School District (dated Sept. 14, 1999) (FCDL for File No. SLD-125105).

¹³ See Memo from Wayne Scott, Director, Internal Audit, USAC, to George McDonald, USAC, Audit of Iosco Intermediate School District, BEN #131160 (dated Nov. 6, 2002) (USAC Audit).

¹⁴ *Id.* at 4-5. When USAC informed Iosco that USAC could not verify that Iosco had paid the non-discounted portion of its 1998 discounted services under the E-rate program, Iosco provided USAC with LSI's invoices. See, e.g., Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco Educational Service Agency, at 1-3 (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-125105); USAC Audit at 4. USAC found that these invoices indicate that Iosco had not paid its share of the costs, but that, instead, LSI had donated that amount to Iosco. *Id.*

¹⁵ USAC Audit at 2-3.

the services) and for two applications for funding year 1999 (due to the use of LSI as a consultant during the competitive bidding process).¹⁶

6. In May 2003, Iosco appealed USAC's decisions to USAC.¹⁷ Iosco asserted that the combination of new personnel and misplaced records led to its inability to provide USAC with the records requested to show that it had paid the discounted price for its E-rate services.¹⁸ Iosco submitted a chart providing information for its five funding year 1998 applications for services from LSI showing the portion of the services paid by Iosco (including a \$5,000 trade-in credit) and those paid by the E-rate program.¹⁹ In addition to this chart, Iosco also attached copies of two cancelled checks made out to "Local Internet Services" as evidence demonstrating that it had paid its full non-discounted share of LSI's bills.²⁰ One check was for \$9,000, dated in December 1997, and the other check was for \$5,329.83, dated April 28, 1999.²¹ Iosco also stated that LSI made numerous phone calls to USAC and was told that it could consult for the applicant as long as it was authorized to do so.²² Iosco contended that, upon being

¹⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Apr. 2, 2003) (Commitment Adjustment (COMAD) Letter for File No. SLD-108653); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Apr. 2, 2003) (COMAD Letter for File No. SLD-108654); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Apr. 2, 2003) (COMAD Letter for File No. SLD-108813); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Apr. 2, 2003) (COMAD Letter for File No. SLD-108998); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robin Summers, Iosco Intermediate School District (dated Apr. 2, 2003) (COMAD Letter for File No. SLD-109647); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Hathaway, Iosco Intermediate School District (dated Apr. 2, 2003) (COMAD Letter for File No. SLD-120468); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Hathaway, Iosco Intermediate School District (dated Apr. 2, 2003) (COMAD Letter for File No. SLD-125105).

¹⁷ Letter from Ronald Stec, Business Manager, Iosco, to Schools and Libraries Division, Universal Service Administrative Company (dated May 29, 2003) (Letter of Appeal for File No. SLD-108653); Letter from Ronald Stec, Business Manager, Iosco, to Schools and Libraries Division, Universal Service Administrative Company (dated May 29, 2003) (Letter of Appeal for File No. SLD-108654); Letter from Ronald Stec, Business Manager, Iosco, to Schools and Libraries Division, Universal Service Administrative Company (dated May 29, 2003) (Letter of Appeal for File No. SLD-108813); Letter from Ronald Stec, Business Manager, Iosco, to Schools and Libraries Division, Universal Service Administrative Company (dated May 29, 2003) (Letter of Appeal for File No. SLD-108998); Letter from Ronald Stec, Business Manager, Iosco, to Schools and Libraries Division, Universal Service Administrative Company (dated May 29, 2003) (Letter of Appeal for File No. SLD-109647); Letter from Ronald Stec, Business Manager, Iosco, to Schools and Libraries Division, Universal Service Administrative Company (dated May 29, 2003) (Letter of Appeal for File No. SLD-120468); Letter from Ronald Stec, Business Manager, Iosco, to Schools and Libraries Division, Universal Service Administrative Company (dated May 29, 2003) (Letter of Appeal for File No. SLD-125105).

¹⁸ See, e.g., Letter of Appeal for File No. SLD-108813 at 1; USAC Audit at 4-5.

¹⁹ See, e.g., Letter of Appeal for File No. SLD-108813 at 2.

²⁰ *Id.* at 3.

²¹ *Id.*

²² See, e.g., Letter of Appeal for File No. SLD-125105 at 1; USAC Audit at 4.

informed that such relationship was no longer acceptable two years later, Iosco terminated the consultant relationship with LSI.²³

7. In January 2004, USAC rejected Iosco's appeals, affirming the conclusions reached in USAC's audit report.²⁴ Specifically, USAC found that the invoices that Iosco provided to USAC during the auditing process indicated that LSI had donated most of the non-discounted portion of the costs to Iosco, and that the use of LSI as a consultant violated the Commission's competitive bidding rules.²⁵ Subsequently, in March 2004, Iosco filed the requests for review with the Commission.²⁶ In the requests for review, Iosco repeats the arguments it made in its appeal to USAC.²⁷

III. DISCUSSION

8. We deny Iosco's requests for review. We affirm USAC's decision to seek recovery of funding already disbursed to Iosco for discounted services under the E-rate program for the relevant funding requests for funding years 1998 and 1999. First, we find that Iosco violated the Commission's rules by failing to pay the full non-discounted portion of the services received from its service provider, LSI, for funding year 1998.²⁸ Iosco has not submitted evidence demonstrating that it paid the full non-discounted price of the services it purchased from LSI in funding year 1998.²⁹ As indicated above, the Commission's rules provide that eligible schools and libraries must pay the full non-discounted portion of the services or products purchased with E-rate discounts.³⁰ The chart submitted by Iosco indicates that the services Iosco purchased cost \$81,530.62 for equipment and \$17,571.15 for labor, for a total of \$99,101.77.³¹ Of that total, Iosco calculates \$70,109.51 as being paid for with E-rate funds and \$28,992.26 remaining as the portion to be paid by Iosco.³² The two checks totaling \$14,329.83 it submits

²³ *Id.*

²⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-108653); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-108654); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-108813); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-108998); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-109647); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-120468); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald Stec, Iosco (dated Jan. 20, 2004) (Appeal Decision Letter for File No. SLD-125105).

²⁵ USAC Audit at 4-5; *supra* para. 5, note 14.

²⁶ Requests for Review.

²⁷ *See id.*; *supra* para. 6.

²⁸ *See Universal Service First Report and Order*, 12 FCC Rcd at 9036, para. 493; 47 C.F.R. § 54.523.

²⁹ *See, e.g.*, Letter of Appeal for File No. SLD-108813 at 2-3.

³⁰ *See supra* para. 4.

³¹ *See, e.g.*, Letter of Appeal for File No. SLD-108813 at 2.

³² *Id.*

and a \$5,000 trade-in credit it asserts as evidence of its full payment, however, only total \$19,329.83.³³ Therefore, we affirm USAC's decision to seek recovery of the E-rate funds disbursed to Iosco for the relevant funding requests for funding year 1998.

9. Second, we find that Iosco violated the Commission's rules by using its service provider, LSI, as a consultant during the competitive bidding process.³⁴ The record shows that Iosco's consultant, who signed its FCC Form 470 applications, was also an employee of LSI, Iosco's service provider.³⁵ The contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested.³⁶ When an applicant gives that capability to an entity that also participates in the competitive bidding process as a prospective service provider, the applicant impairs its ability to hold a fair and open competitive bidding process. We are deeply concerned about practices that undermine the framework of the competitive bidding process. Service provider participation of the type addressed here may suppress fair and open competitive bidding and ultimately damage the integrity of the program. We do not find Iosco's argument that it was unaware that such an ongoing relationship with LSI was unacceptable as sufficient evidence to grant its requests for review. Therefore, we affirm USAC's decision to seek recovery of the E-rate funds disbursed to Iosco for the relevant funding requests for funding year 1999.

IV. ORDERING CLAUSE

10. 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 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 Iosco Regional Educational Service Agency on March 19, 2004, ARE DENIED.

11. 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

³³ *Id* at 3. For the remainder owed for these services, Iosco's chart indicates that it received \$5,000 in "trade in value," and a balance due on the services for funding year 1998 of \$9,662.43. *Id* at 2. In addition, Iosco's chart understates the amount of its share for services purchased for two applications by almost \$12,000. *Id*. Specifically, it omits \$2,699.40 of its share of the services for funding request number 137241 (SLD-108654) and \$9,135 for its share of the services ordered in funding request 131701 (SLD-109647). *Id*.

³⁴ See 47 C.F.R. §§ 54.504(a)-(b), 54.511; *Universal Service First Report and Order*, 12 FCC Rcd at 9029, 9078-79, paras. 480, 575-77; see also *Mastermind Order*, 16 FCC Rcd at 4033.

³⁵ See *supra* para. 5.

³⁶ See *supra* para. 3, note 9.