

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of Decisions of the
Universal Service Administrator by
The Bronx Charter School for Better Learning
Bronx, New York
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-504658, 506207
CC Docket No. 02-6

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant two requests for review filed by The Bronx Charter School for Better Learning, Bronx, New York (Bronx Charter).1 Bronx Charter seeks review of decisions by the Universal Service Administrative Company (USAC) decreasing funding from the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2006.2 Specifically, USAC reduced funding on the ground that Bronx Charter’s documentation did not support the requested discount level.3 We find, however, that Bronx Charter’s assessment was correct and that USAC should have used a different method to calculate the discount level. We therefore grant the requests for review and remand the underlying application to USAC for further consideration consistent with this order.4 To ensure that the underlying application is resolved expeditiously, we direct USAC to

1 See Letter from Janice H. Meyers, The Bronx Charter School for Better Learning, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed Dec. 6, 2006) (2006 Request for Review); Letter from Janice H. Meyers, The Bronx Charter School for Better Learning, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed Apr. 13, 2007) (2007 Request for Review). Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of the universal service fund administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 See 2006 Request for Review at 1; 2007 Request for Review at 1.

3 See Letter from Universal Service Administrative Company, Schools and Libraries Division, to Janice H. Meyers, The Bronx Charter School for Better Learning (dated Nov. 6, 2006) (Administrator’s Decision on Appeal); Letter from Universal Service Administrative Company, Schools and Libraries Division, to Janice H. Meyers, The Bronx Charter School for Better Learning (dated Sept. 19, 2006) (Sept. 19 Funding Commitment Decision Letter); Letter from Universal Service Administrative Company, Schools and Libraries Division, to Janice H. Meyers, The Bronx Charter School for Better Learning (dated Apr. 3, 2007) (Apr. 3 Funding Commitment Decision Letter).

4 We estimate that the appeals granted in this order involve applications for approximately \$317,928.82 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

complete its review and issue a decision based on a complete review and analysis no later than 90 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.<sup>5</sup> The discount available to a particular applicant is determined by indicators of poverty and high cost.<sup>6</sup> The level of poverty for schools and school districts is measured by the percentage of student enrollment that is eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism, such as a survey.<sup>7</sup> USAC's procedures require that student surveys include the following information: 1) address of family, 2) grade level of each child, 3) size of family, and 4) income level of the parents.<sup>8</sup> A school's high cost status is determined by rules that classify it as urban or rural.<sup>9</sup> The rules provide a matrix reflecting both a school's urban or rural status and the percentage of its students eligible for the school lunch program to establish the E-rate funding discount rate, ranging from 20 percent to 90 percent.<sup>10</sup> The level of discount is determined primarily by the level of economic disadvantage, with some schools and libraries located in rural areas receiving an additional discount of up to 10 percent (depending on the level of disadvantage).<sup>11</sup>

3. On the FCC Form 471, applicants are required to provide information that establishes their appropriate discount rate.<sup>12</sup> Pursuant to its operating procedures, USAC performs a Program

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Third Quarter 2010 (Apr. 30, 2010). Thus, we determine that the action we take today should have a minimal effect on the universal service fund as a whole.

<sup>5</sup> See 47 C.F.R. §§ 54.501-54.503; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9040-44, paras. 501-07 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

<sup>6</sup> 47 C.F.R. § 54.505(b).

<sup>7</sup> 47 C.F.R. § 54.505(b)(1).

<sup>8</sup> See Schools and Libraries website, Step 5: Alternative Discount Mechanisms Fact Sheet, <http://www.universalservice.org/sl/applicants/step05/alternative-discount-mechanisms.aspx#3> (last visited June 4, 2010). The USAC website provides applicants with guidelines regarding survey content.

<sup>9</sup> 47 C.F.R. § 54.505(b)(3)(i), (ii).

<sup>10</sup> 47 C.F.R. § 54.505(c).

<sup>11</sup> See 47 C.F.R. § 54.505(c).

<sup>12</sup> Block 4 of the funding year 2006 FCC Form 471 required the school to provide information regarding the school's status as rural or urban, the number of students enrolled in the school, and the number of students eligible for the NSLP. See Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471 currently in use). Schools choosing not to use an actual count of students eligible for the NSLP may use only the federally-approved alternative mechanisms contained in the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. No. 107-110). See funding year 2006 FCC Form 471 at Block 4. This rule states, in relevant part, that private schools without access to the same poverty data that public schools use to count children from low-income families may use comparable data "(1) [c]ollected through alternative means such as a survey" or "(2) [f]rom existing sources such as AFDC [Aid to Families with Dependent Children] or tuition scholarship programs." See 34 C.F.R. § 200.78(a)(2). Schools using a federally-approved alternative mechanism may use participation in other income-assistance programs, such as

Integrity Assurance (PIA) review to verify information contained in each application.<sup>13</sup> During this process, USAC may ask for additional documentation to support the statements made on the application. USAC routinely requests that applicants provide documentation supporting their assertions regarding their student bodies' eligibility for the NSLP or alternative methods permitted by the rules governing the discount calculation.<sup>14</sup>

4. In 1998, in the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts will be allocated when available funding is less than total demand.<sup>15</sup> These rules provide that requests for telecommunications and Internet access services shall receive first priority for available funds and that requests for internal connections shall receive secondary priority.<sup>16</sup> The rules further provide that, when sufficient funds are not available to fund all requests for discounts for internal connections, USAC shall allocate funds for discounts beginning with those applicants eligible for a 90 percent level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., 89 percent, 88 percent, and so on.<sup>17</sup>

5. Bronx Charter applied for discounted services for funding year 2006.<sup>18</sup> On the FCC Forms 471, Bronx Charter indicated that it was eligible for discounted services at the 90 percent discount level because 125 of Bronx Charter's 162 students were eligible for the NSLP.<sup>19</sup> Bronx Charter used a prescribed method to demonstrate its eligible discount rate by submitting a Report of Meals Served Form to USAC that is used by the New York City Department of Education for reimbursement for NSLP.<sup>20</sup> The Report of Meals Served Form reports on a weekly basis, among other things, the total number of students enrolled in the school, the average daily attendance, the number of free and reduced-price lunches served each school day, and the total number of children eligible for free and reduced-price lunch under the NSLP.<sup>21</sup> Bronx Charter submitted a form to USAC that left the number of students eligible for the NSLP blank.<sup>22</sup> USAC then issued Funding Commitment Decision Letters (FCDLs) that

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Medicaid, food stamps, or Supplementary Security Income (SSI), to determine the number of students that would be eligible for the NSLP. See Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 at 8-9 (November 2004) (funding year 2006 FCC Form 471 Instructions).

<sup>13</sup> See Schools and Libraries website, Step 8: Undergo Application Review, <http://www.universalservice.org/sl/applicants/step08/default.aspx> (last visited June 4, 2010).

<sup>14</sup> See 47 C.F.R. § 54.505(b)(1), (2).

<sup>15</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14934-35, para. 31 (1998) (*Fifth Reconsideration Order*).

<sup>16</sup> See 47 C.F.R. § 54.507(g)(1).

<sup>17</sup> *Id.*

<sup>18</sup> See FCC Form 471, The Bronx Charter School for Better Learning (filed Jan. 25, 2006); FCC Form 471, The Bronx Charter School for Better Learning (filed Feb. 5, 2006).

<sup>19</sup> *Id.*

<sup>20</sup> See Administrator's Decision on Appeal at 2; see also 2006 Request for Review at 1.

<sup>21</sup> See 2006 Request for Review, at attachment.

<sup>22</sup> *Id.*

decreased Bronx Charter's requested discount level to 80 percent instead of 90 percent.<sup>23</sup> USAC determined Bronx Charter's discount rate by dividing the average number of free and reduced-price lunches served by the average daily attendance.<sup>24</sup> Because funding for internal connections in funding year 2006 was not disbursed to applicants that qualified for a discount rate below 86 percent, however, this decision effectively denied Bronx Charter's funding requests for internal connections.<sup>25</sup> In October 2006, Bronx Charter appealed USAC's decision, stating that it qualified for E-rate funding at the requested 90 percent discount level and that the discount level was supported by the documentation.<sup>26</sup> USAC denied the appeal on the grounds that the documentation did not support the requested discount level.<sup>27</sup> Bronx Charter submitted an appeal to the Commission in December 2006 stating that USAC's determination was incorrect, and another appeal in April 2007 disputing USAC's decision with regard to Bronx Charter's internal connections funding request.<sup>28</sup>

### III. DISCUSSION

6. Based upon our review of the record, we grant the requests for review and find that Bronx Charter qualified for a 90 percent discount in funding year 2006. Under Commission rules, discount eligibility is determined by the school's percentage of students that are eligible for free or reduced-priced lunch under the NSLP.<sup>29</sup> We agree with Bronx Charter that USAC should have calculated the discount level by dividing the number of students eligible for free and reduced-price meals by the total number of students enrolled in the school. Accordingly, USAC erred in its calculation when it divided the average number of free and reduced-price lunches served by the average daily attendance.<sup>30</sup> Not only did USAC's calculation improperly rely on daily attendance numbers instead of the total number of students enrolled, but it relied on the number of meals actually served, which may have excluded students who, although eligible for NSLP, either brought lunches from home or otherwise did not eat lunch at school that week. After comparing the Report of Meals Form that Bronx Charter submitted to USAC against the form submitted to the Commission on appeal, we find that the form submitted to USAC was incomplete. Specifically, the form USAC received did not include the number of students eligible for free and reduced-price lunch, whereas the form the Commission received indicated that 125 students were eligible for free and reduced-price lunch.<sup>31</sup> Using the numbers in the

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<sup>23</sup> See Sept. 19 Funding Commitment Decision Letter at 5-6; Apr. 3 Funding Commitment Decision Letter at 5-9.

<sup>24</sup> See Administrator's Decision on Appeal at 1.

<sup>25</sup> Funding for Priority 2 services in funding year 2006 was capped at the 86 percent discount level. See Schools and Libraries website, Schools and Libraries News Brief, July 27, 2007, regarding priority two services funding cap for 2006, <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=102> (last visited June 4, 2010).

<sup>26</sup> See Letter from Janice Meyers, The Bronx Charter School for Better Learning, to Schools and Libraries Division, Universal Service Administrative Company (dated Oct. 2, 2006) (SLD No. 504658 Appeal to USAC Letter); Letter from Janice Meyers, The Bronx Charter School for Better Learning, to Schools and Libraries Division, Universal Service Administrative Company (dated Oct. 2, 2006) (SLD No. 506207 Appeal to USAC Letter).

<sup>27</sup> See Administrator's Decision on Appeal at 2.

<sup>28</sup> See 2006 Request for Review at 1; 2007 Request for Review at 1.

<sup>29</sup> See 47 C.F.R. § 54.505(b)(1).

<sup>30</sup> See Administrator's Decision on Appeal at 1.

<sup>31</sup> See SLD No. 504658 Appeal to USAC Letter; SLD No. 506207 Appeal to USAC Letter; 2006 Request for Review at attachment; 2007 Request for Review at attachment.

form submitted to the Commission, we find that Bronx Charter is eligible for E-rate funding at the requested 90 percent discount level. We therefore grant the requests for review and remand the underlying application to USAC for further processing consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the requested services.<sup>32</sup> We direct USAC to complete its review of the application no later than 90 days from release of this order.<sup>33</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 USAC has evidence that this standard has not been met.

7. In addition, at this time, there is no evidence of waste, fraud, or abuse, misuse of funds, or a failure to adhere to core program requirements. 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 appeal addressed here, the Commission reserves the right to conduct audits and investigations to determine compliance with the E-rate program rules and requirements. Because audits and 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 distributed 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 our own procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, 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 requests for review filed by The Bronx Charter School for Better Learning, Bronx, New York, on December 6, 2006 and April 13, 2007, ARE GRANTED and the application is REMANDED to USAC for further consideration in accordance with the terms of this order.

9. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, 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 USAC SHALL COMPLETE its review of the application and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

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<sup>32</sup> Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that has previously been released by a service provider or applicant, including in a civil settlement or criminal 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>33</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 all grounds for denial.

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

Carol E. Matthey  
Deputy Chief  
Wireline Competition Bureau