

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of a Decision of the)	
Universal Service Administrator by)	
)	
Integrity Communications, Ltd.)	
Corpus Christi, TX)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: July 1, 2010

Released: July 1, 2010

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Integrity Communications, Ltd. (Integrity) filed a petition for reconsideration of a Wireline Competition Bureau (Bureau) order denying Integrity’s request for review of actions by the Universal Service Administrative Company (USAC).¹ For the reasons set forth below, we deny the Petition for Reconsideration.

II. BACKGROUND

2. The *Bureau Order* upheld USAC’s determinations in its Audit Letter to Integrity concerning Integrity’s actions under its contract with the San Benito Independent School District (San Benito). The contract between Integrity and San Benito, which was to provide services under the schools and libraries universal service support mechanism (also known as the E-rate program), stated that there would be no payments to the service provider before completion of the project.² The Audit Letter stated that Integrity had issued invoices to San Benito and USAC prior to completion of the project, thereby violating the terms of the procurement contract.³ The Audit Letter stated that Integrity’s actions “indicate that [Integrity] failed to comply with one or more of the certifications that [Integrity] made on program

¹ See Petition for Reconsideration by Integrity Communications, Ltd., CC Docket No. 02-6 (filed Sept. 27, 2009) (Petition for Reconsideration). See 47 C.F.R. § 1.106 (directing that petitions requesting reconsideration of Bureau-level orders pursuant to delegated authority will be acted upon by the designated authority or referred by such authority to the Commission). See also *Request for Review by Integrity Communications, Ltd., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd. 11186 (Wireline Comp. Bur. 2009) (*Bureau Order*).

² See Letter from Schools and Libraries Division, Audit Response, USAC, to Stewart Burleigh, Integrity (dated Oct. 24, 2007) (Audit Letter).

³ *Id.* at 2.

forms and/or that [Integrity] has otherwise failed to comply with program requirements.”⁴ The Audit Letter further required that Integrity file a compliance plan within six months to ensure that, when it filed for future reimbursements from USAC, Integrity would have provided the services or equipment to the applicant, and that Integrity’s receipt of any progress or advance payments was included in the relevant contract between Integrity and the applicant.⁵ The Audit Letter informed Integrity that USAC would take no action on funding requests involving Integrity until it reviewed Integrity’s compliance plan and determined that it adequately addressed the non-compliance issue.⁶ The Audit Letter concluded that a copy of the letter would be mailed to all applicants with pending E-rate funding commitments involving Integrity, so that such applicants “may make informed decisions about how to proceed...”⁷

3. Integrity did not file a compliance plan, and instead filed with the Bureau a request for review of USAC’s actions.⁸ After considering Integrity’s challenges to USAC’s actions, and meeting with Integrity representatives, the Bureau denied Integrity’s request for review.⁹ The Bureau found that Integrity’s actions in sending interim invoices to San Benito and USAC were inconsistent with the E-rate rules.¹⁰ The Bureau further found that USAC acted appropriately in requiring Integrity to file a compliance plan to assure USAC that Integrity had established sufficient internal controls to avoid repeating the violation.¹¹ Finally, the Bureau concluded that USAC’s actions were appropriate in light of the fact that USAC was aware, at that time, of ongoing investigations of Integrity by the Department of Justice and the Commission.¹²

4. With respect to USAC’s decision to send copies of the Audit Letter to the other school districts affected by the audit findings, the Bureau concluded that USAC acted reasonably and had followed its established policies and procedures. The *Bureau Order* stated:

At the time that USAC took these actions, it understood that the Wireline Competition Bureau had approved the format of its Non-Compliant Auditee Letter, and USAC had proposed to send this letter to all affected parties, including all related E-rate applicants, if a service provider failed to respond adequately regarding non-compliant audit findings (internal citation omitted). Consistent with this understanding, USAC acted reasonably at the time in sending out the Audit Letter to Integrity’s E-rate applicant schools and in suspending funding to other projects until Integrity filed its compliance plan.¹³

⁴ *Id.* at 1.

⁵ *Id.* at 1.

⁶ *Id.* at 2-3.

⁷ *Id.* at 2.

⁸ See Request for Expedited Review by Integrity Communications, Ltd., CC Docket No. 02-6 (filed Dec. 26, 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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

⁹ *Bureau Order*, 24 FCC Rcd. at 11186, para. 1.

¹⁰ *Id.*, 24 FCC Rcd. at 11191, para. 12.

¹¹ *Id.*, 24 FCC Rcd. at 11191-11194, paras. 12-19.

¹² *Id.*, 24 FCC Rcd at 11194-95, para. 20.

¹³ *Id.*, 24 FCC Rcd. at 11195, para. 21.

The Non-Compliant Auditee Letter referenced in the *Bureau Order* was in USAC's Proposed Audit Resolution Plan for Schools and Libraries Support Mechanism Auditees, which was attached to a Wireline Competition Bureau Public Notice.¹⁴

5. Integrity argues in its reconsideration petition that USAC's decision to send copies of the Audit Letter to other affected school districts was not in compliance with the approved USAC procedure. Specifically, Integrity asserts that USAC violated its policies when it sent copies of the Audit Letter to other school districts at the same time it sent the Audit Letter to Integrity, before determining that Integrity "failed to respond adequately regarding non-compliant audit findings."¹⁵ Integrity argues that USAC failed to conform to USAC's procedures as described in paragraph 21 of the *Bureau Order*. Integrity asserts that the Bureau thus erred in concluding that USAC acted reasonably and consistently with its established procedures in its treatment of Integrity.¹⁶ Integrity also argues that the actions of USAC "resulted in a *de facto* suspension and debarment of Integrity without compliance with the procedures provided by the Commission's rules."¹⁷

6. In response to separate concerns about the *Bureau Order*, the United States Telecom Association (USTA) filed a Petition for Clarification or Reconsideration of the *Bureau Order* (USTA Petition).¹⁸ USTA took no position on the merits of Integrity's Petition for Reconsideration. The Bureau sought and received comments on both the Integrity and USTA petitions.¹⁹ No commenter other than Integrity addressed USAC's decision to send letters to other school districts or asserted that USAC's

¹⁴ See *Wireline Competition Bureau Seeks Comment on the Universal Service Administrative Company's Audit Resolution Plan*, CC Docket No. 02-6, Public Notice, 20 FCC Rcd 1064 at Attach. (Wireline Comp. Bur. 2004) (USAC Proposed Audit Resolution Plan).

¹⁵ Petition for Reconsideration at 6, quoting *Bureau Order* at para. 21.

¹⁶ Petition for Reconsideration at 4-6.

¹⁷ Petition for Reconsideration at 5.

¹⁸ See Petition for Clarification or, in the Alternative, Partial Reconsideration of the United States Telecom Association, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6 (filed Sept. 28, 2009) (USTelecom Petition). USTA expressed a separate concern that the *Bureau Order* could be interpreted to mean that it is appropriate to make findings against a service provider such as Integrity in the course of an audit of a school district or other E-rate beneficiary, without first affording the service provider a meaningful opportunity to dispute and respond to those findings. USTA Petition at 3.

¹⁹ See *Comment Sought on Integrity Communications, Ltd. Petition for Reconsideration and United States Telecom Association Petition for Clarification, or in the Alternative, Partial Reconsideration of the Wireline Competition Bureau's Order Denying Integrity Communications' Request for Review of a Decision of the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, 24 FCC Rcd 12741 (Wireline Comp. Bur. 2009). See, e.g., Comments of AT&T, Inc., CC Docket No. 02-6 (filed Nov. 20, 2009); Comments of Education Networks of America, Inc./ENA Services, LLC, CC Docket No. 02-6 (filed Nov. 20, 2009); Reply Comments of Achieve Telecom Network of MA, LLC, CC Docket No. 02-6 (filed Dec. 7, 2009); Reply Comments of Verizon Communications, Inc., CC Docket No. 02-6 (filed Dec. 7, 2009); Comments of C.P. McClure, CC Docket No. 02-6 (filed Nov. 19, 2009); Comments of G. Lyons, CC Docket No. 02-6 (filed Nov. 20, 2009); Comments of C. Smith, CC Docket No. 02-6 (filed Nov. 20, 2009); Comments of L.M. Shores, CC Docket No. 02-6 (filed Nov. 20, 2009); Comments of J. J. Vera, CC Docket No. 02-6 (filed Nov. 20, 2009).

action was inconsistent with the procedures stated in the *Bureau Order*. Indeed, the other commenters expressly took no position on the matters raised in Integrity's Petition for Reconsideration.²⁰

III. DISCUSSION

7. We deny the Petition for Reconsideration. To the extent that the *Bureau Order* mischaracterized USAC's procedures, we clarify in this order the approved procedure in place at that time. In addition, we reject Integrity's argument that USAC's actions effectively suspended and debarred it from the E-rate program. Because the USTA Petition and the supporting comments raise a different issue than the Integrity Petition for Reconsideration, we do not address that petition in this order, but will address it in a separate decision.

8. Integrity's Petition for Reconsideration focuses on Paragraph 21 of the *Bureau Order*, which attempted to summarize the USAC Non-Compliant Auditee Letter procedures that were set forth in USAC's Proposed Audit Resolution Plan for Schools and Libraries Support Mechanism Auditees.²¹ USAC's procedures in sending out such letters are set forth at page 8 of 11 in the referenced document, as follows:

Non-Compliant Auditee Letter

On October 13, 2004, the Bureau approved USAC's proposed Non-Compliant Auditee Letter. This letter will be sent to all auditees that have been determined to be not compliant with program rules. In this letter, the auditee (or service provider if the service provider is determined to be at fault for the non-compliance) is informed that as a result of its noncompliance, no pending or future funding commitments will be made until the auditee (or service provider) is able to provide SLD with assurances that the findings that resulted in the non-compliance have been adequately addressed. The letter proposes a 6-month time frame that can be extended if the auditee provides a reasonable explanation of the need for a longer time period. If the auditee (or service provider) fails to respond, or responds inadequately, USAC will deny pending funding requests. *All affected parties including applicants and service providers will receive a copy of the relevant letter(s).*²²

9. Based on our review of the Non-Compliant Auditee Letter procedures, we conclude that USAC followed its approved procedures when it sent copies of the Audit Letter to Integrity and to each of the affected school districts. The USAC audit letter procedures in effect at the time of the Integrity Audit Letter did not require USAC to wait to send such letters to other affected school districts until it received a response from the subject of the letter. In fact, the procedures quoted above reflect that all affected parties would receive a copy of the initial Non-Compliant Auditee Letter. USAC's response – to stop processing

²⁰ The commenters filed solely in support of USTA's pleading. *See, e.g.*, AT&T Comment at 2 ("Like US Telecom, AT&T takes no position with respect to the accuracy of the facts described, or their significance with respect to the issue of liability for non-compliance with the E-Rate rules (by either Integrity or the applicant in question, San Benito"); Verizon Comment at 2 ("Like US Telecom and the commenters in this matter, Verizon takes no position on the underlying facts of the Bureau's *Integrity Order* and supports the efforts of USAC and the Commission to ensure that E-rate funding is disbursed in accordance with the Act and the Commission's rules.").

²¹ As discussed above, the Non-Compliant Auditee Letter referenced in the Bureau Order was in USAC's Proposed Audit Resolution Plan for Schools and Libraries Support Mechanism Auditees, which was attached to a Wireline Competition Bureau Public Notice. *See* USAC Proposed Audit Resolution Plan, 20 FCC Rcd 1064 at Attach.

²² *See* USAC Proposed Audit Resolution Plan at 8 (emphasis added).

funding requests –could last up to six months while the recipient prepared a compliance plan (or longer if the filing deadline were extended). During that six-month period, other applicants affected by USAC’s response would need to know why their funding requests were not being processed. A simultaneous mailing of the audit letter to Integrity and the affected schools was consistent with USAC’s procedures in effect at the time.

10. In summarizing USAC’s procedures, the *Bureau Order* conflated the last two sentences of the above-quoted audit letter procedures. The purpose of the *Bureau Order* was to identify whether USAC’s actions were consistent with its stated procedures. We reaffirm our conclusion that they were. To the extent that the *Bureau Order* inaccurately paraphrased USAC’s procedures, we correct that inaccuracy here, but our restatement here of USAC’s policy does not change the substance – or correctness – of our determination that USAC’s actions were consistent with its policies in effect at the time.

11. Furthermore, we do not find persuasive Integrity’s argument that it was effectively suspended and debarred from the E-rate program without the benefit of Commission procedures. Under the Commission’s rules, “suspension” and “debarment” have specific definitions. Section 54.8 of the Commission’s rules defines “suspension” as “any action taken by the Commission in accordance with these regulations that immediately excludes a person from activities associated with or relating to the schools and libraries support mechanism . . . for a temporary period, pending completion of debarment proceedings.”²³ “Debarment” is defined by the Commission as “any action taken by the Commission in accordance with these regulations to exclude a person from activities associated with or relating to the schools and libraries support mechanism . . .”²⁴ Integrity was not debarred, as there was never any intention to exclude it, permanently or for a defined period of time, from the program, nor was Integrity suspended, because suspended entities, by definition, are in the process of being debarred. The letter USAC sent to Integrity stated that USAC “would take no action” on the pending requests until Integrity addressed the specific audit finding and demonstrated that it would comply with the Commission’s rules in the future.²⁵ USAC’s decision to stop further processing of pending requests until Integrity took the specified action does not constitute suspension and debarment. Accordingly, we deny Integrity’s Petition for Reconsideration.

III. ORDERING CLAUSES

12. IT IS FURTHER ORDERED, pursuant to section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration of Integrity Communications Ltd. IS DENIED as set forth herein.

²³ 47 C.F.R. § 54.8(a)(7).

²⁴ 47 C.F.R. § 54.8(a)(5).

²⁵ See Letter from Schools and Libraries Division, Audit Response, USAC, to Stewart Burleigh, Integrity (dated Oct. 24, 2007).

13. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau