

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Cornerstones of Care, et al.
Kansas City, Missouri
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-586498, et al.
CC Docket No. 02-6

ORDER

Adopted: October 28, 2010

Released: October 28, 2010

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address 10 appeals of decisions by the Universal Service Administrative Company (USAC) denying requests for funding under the E-rate program (more formally known as the schools and libraries universal service support program) on the ground that the consortia leaders did not provide sufficient evidence of their authority to represent the consortium members. Upon review of the record, we find that the petitioners have submitted evidence that demonstrates that they were authorized to submit the FCC Form 471 applications on behalf of their consortium members. We therefore grant these appeals and remand the underlying applications to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the underlying applications and issue a decision based on a complete review and analysis no later than 120 calendar days from the release date of this order.

II. BACKGROUND

2. E-rate Program Rules and Requirements. Under the E-rate program, schools historically have applied for discounts for eligible telecommunications services, Internet access services, and internal

1 A list of the requests for review is attached in the appendix. 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). In this order, we use the term "appeals" to refer generally to the requests for review of the decisions issued by USAC. Santa Clara filed three separate appeals for its FCC Form 471 application submitted in funding year (FY) 2006. See Appendix. For purposes of this order, however, we treat these three separate appeals as one appeal.

connections.² In accordance with the Commission's rules, an applicant must file with USAC an FCC Form 470 requesting bids for discounted services.³ After an applicant has entered into agreements for eligible services with one or more service providers, it must file an FCC Form 471 application with USAC.⁴

3. The Commission's rules allow schools and libraries to form consortia for purposes of seeking competitive bids for their service requests.⁵ Because discounts are restricted by statute to "bona fide request[s]" for services, a consortium application may only be submitted on behalf of schools and libraries that have actually authorized the consortium to make the request.⁶ By signing the FCC Form 471, the applicant is certifying that it is authorized to submit and certify to the accuracy of the application on behalf of all consortium members.⁷ An applicant applying as a consortium must submit a letter of agency (LOA) from each of its members expressly authorizing the applicant to submit an application on its behalf.⁸

4. An LOA must contain the following five elements: the name of the person filing the application; the name of the person authorizing the filing of the application; the specific funding year the LOA covers; the signature, date, and title of an official who is an employee of the entity authorizing the filing of the application; and the type of services covered by the LOA.⁹ In lieu of an LOA, applicants may provide other documentation as proof of authorization.¹⁰ For example, consortia members may provide copies of relevant state statutes or regulations requiring them to participate in the consortium or some other proof that each consortium member is aware that it is represented on the application.¹¹

² 47 C.F.R. §§ 54.501-54.503.

³ The applicant must wait 28 days before entering into an agreement with a service provider for the requested services. 47 C.F.R. § 54.504(b); *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004).

⁴ The FCC Form 471 notifies USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services. 47 C.F.R. § 54.504(c); *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

⁵ 47 C.F.R. § 54.501(d)(1).

⁶ *See Request for Waiver of the Decision of the Universal Service Administrator by Kan-ed, Kansas Board of Regents*, CC Docket No. 02-6, Order, 21 FCC Rcd 13658 (2006) (*Kan-ed Order*); *see also* 47 U.S.C. § 254(h)(1)(B).

⁷ 47 C.F.R. § 54.501(d)(1); *see also* USAC Website, Schools and Libraries, Letter of Agency, at <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (last visited Oct. 25, 2010) (USAC LOA Guidance); FCC Form 471, Item 33, Block 6.

⁸ *See Kan-ed Order*, 21 FCC Rcd 13658; *see also* 47 U.S.C. § 254(h)(1)(B); *Request for Review of the Decision of the Universal Service Administrator by Project Interconnect, Brooklyn Park, Minnesota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 13655 (Com. Car. Bur. 2001) (*Project Interconnect*).

⁹ *See* USAC LOA Guidance.

¹⁰ *Id.*

¹¹ *Id.*

5. In funding year 2005, USAC began requiring consortia leaders to obtain proof of representation from each consortium member prior to the certification date of their FCC Forms 471.¹² In the *South Carolina CIO Order*, the Wireline Competition Bureau (Bureau) found that USAC had not provided sufficient notice for consortia applicants to comply with the new policy in funding year 2005, and, therefore, should not have denied the South Carolina consortium's application for failing to comply with the new procedure.¹³ USAC has also denied consortium applications for which some of the consortium's members either did not submit an LOA or submitted a deficient LOA.¹⁴ In an order issued in 2006 resolving an appeal filed by the Kan-ed consortium, the Commission found that to deny an entire application in those situations would unfairly penalize the entire consortium.¹⁵ In the *Kan-ed Order*, the Commission, therefore, directed USAC to remove from the application those entities for which the applicant could not provide LOAs and adjust the funding requests accordingly, rather than deny the entire application.¹⁶

6. *Requests for Review.* The petitioners submitted their FCC Form 471 applications to USAC for funding years 2005, 2006, 2007, or 2008.¹⁷ USAC denied the petitioners' applications on the grounds that the petitioners failed to submit completed LOAs in accordance with E-rate program rules. Specifically, USAC determined that the consortia leaders did not provide evidence of their authority to represent the consortium members¹⁸ or that the LOAs provided to USAC were deficient.¹⁹ USAC later

¹² See USAC LOA Guidance; see also USAC website, Schools and Libraries, February 2005 Announcements, Sample LOA, at <http://www.universalservice.org/sl/tools/news-archive/2005/022005.asp#020105a> (last visited Oct. 25, 2010).

¹³ *Request for Waiver of the Decision of the Universal Service Administrator by South Carolina Division of the Chief Information Officer*, CC Docket No. 02-6, Order, 21 FCC Rcd 5987 (2006) (*South Carolina CIO Order*).

¹⁴ *Kan-ed Order*, 21 FCC Rcd at 13661, para. 6.

¹⁵ *Id.* at 13661, para. 8.

¹⁶ *Id.* at 13662, para. 9.

¹⁷ FCC Form 471, Cornerstones of Care (filed Feb. 2, 2007); FCC Form 471, Dutchess County Board of Cooperative Educational Services (filed Feb. 16, 2005); FCC Form 471, Erie 1 BOCES Education Campus (filed Feb. 16, 2006); FCC Form 471, Great Western Network (filed Jan. 30, 2008); FCC Form 471, Hacienda La Puente Unified School District (filed Jan. 20, 2006) (FCC Form 471 application number 497903) and Hacienda La Puente Unified School District (filed Jan. 30, 2006) (FCC Form 471 application number 497721) (collectively, Hacienda FCC Forms 471); FCC Form 471, Heart of Georgia RESA (filed Feb. 16, 2006); FCC Form 471, Mathematics and Science Center (filed Feb. 14, 2006); FCC Form 471, Municipal Telephone Exchange (filed Feb. 18, 2005); FCC Form 471, Oregon Department of Administrative Services (filed Feb. 14, 2005); FCC Form 471, Santa Clara County Office of Education (filed Feb. 16, 2006).

¹⁸ See Letter from USAC, Schools and Libraries Division, to Laura Zylberberg, Dutchess County Board of Cooperative Educational Services (dated Aug. 17, 2005); Letter from USAC, Schools and Libraries Division, to Patrick Doyle, Erie 1 BOCES Education Campus (dated Feb. 6, 2007); Letter from USAC, Schools and Libraries Division, to Kyle Tekel, Heart of Georgia RESA (dated May 2, 2006) (Georgia Funding Commitment Decision Letter) (FCDL); Letter from USAC, Schools and Libraries Division, to Walter Freeman, Hacienda La Puente Unified School District (dated Aug. 15, 2006) (regarding FCC Form 471 application numbers 497721 and 497903) (Hacienda FCDL); Letter from USAC, Schools and Libraries Division, to Beverly Lewis, Mathematics and Science Center (dated Aug. 15, 2006); Letter from USAC, Schools and Libraries Division, to Patricia Middleburg, Oregon Department of Administrative Services (dated Jan. 25, 2006) (collectively, FCDLs).

¹⁹ See Letter from USAC, Schools and Libraries Division, to Ross Wheadon, Tarff Affiliates, Inc., consultant for Cornerstones of Care (dated July 26, 2007) (Cornerstones FCDL); Erie FCDL; Letter from USAC, Schools and

affirmed these decisions on appeal.²⁰ The petitioners then filed the instant requests for review with the Commission.²¹

III. DISCUSSION

7. Upon review of the record, we grant these 10 appeals as we find that, on appeal, the petitioners have submitted evidence that is consistent with the LOA requirements and/or remedied the deficiencies in the LOAs.²² We discuss these two groups of appeals separately, below.

A. Evidence of Authority to Represent Consortium

8. USAC denied the applications of Dutchess County Board of Cooperative Educational Services (Dutchess), Erie 1 Board of Cooperative Educational Services (Erie), Heart of Georgia RESA/Gemini Consulting Group, Inc. (Georgia), Hacienda La Puente Unified School District (Hacienda), Mathematics and Science Center (MSC), and Oregon Department of Administrative Services (Oregon) on

Libraries Division, to Bill Strasser, Great Western Network (dated Aug. 26, 2008) (Great Western FCDL); Letter from USAC, Schools and Libraries Division, to Mary Gonzales, Santa Clara County Office of Education (dated May 16, 2006) (regarding FCC Form 471 application number 510337); Letter from USAC, Schools and Libraries Division, to Mary Gonzales, Santa Clara County Office of Education (dated May 9, 2006) (regarding FCC Form 471 application number 511227); Letter from USAC, Schools and Libraries Division, to Mary Gonzales, Santa Clara County Office of Education (dated Apr. 20, 2007) (revised FCDL regarding FCC Form 471 application number 511227); Letter from USAC, Schools and Libraries Division, to Mary Gonzales, Santa Clara County Office of Education (dated May 9, 2006) (regarding FCC Form 471 application number 512749); Letter from USAC, Schools and Libraries Division, to Mary Gonzales, Santa Clara County Office of Education (dated Apr. 20, 2007) (revised FCDL regarding FCC Form 471 application number 512749) (collectively, Santa Clara FCDLs); Georgia FCDL; Hacienda FCDL; Letter from USAC, Schools and Libraries Division, to Fitzgerald Hoskins, Municipal Telephone Exchange (dated Oct. 26, 2005) (regarding FCC Form 471 application number 480648); Letter from USAC, Schools and Libraries Division, to Fitzgerald Hoskins, Municipal Telephone Exchange (dated Oct. 25, 2005) (regarding FCC Form 471 application number 483475).

²⁰ See Letter from USAC, Schools and Libraries Division, to Ross Wheadon, Tariff Affiliates, Inc., consultant for Cornerstones of Care (dated Oct. 1, 2007) (Cornerstones Administrative Decision Letter (ADL)); Letter from USAC, Schools and Libraries Division, to David Sieradzki, counsel for Dutchess County Board of Cooperative Educational Services (dated July 12, 2006) (Dutchess ADL); Letter from USAC, Schools and Libraries Division, to Patrick Doyle, Erie 1 BOCES Education Campus (dated Mar. 19, 2007) (Erie ADL); Letter from USAC, Schools and Libraries Division, to Kyle Tekel, consultant for Heart of Georgia RESA (dated Feb. 2, 2007) (Georgia ADL); Letter from USAC, Schools and Libraries Division, to Gary Matsumoto, Hacienda La Puente Unified School District (dated Jan. 17, 2007) (regarding FCC Form 471 application numbers 497721 and 497903) (Hacienda ADL); Letter from USAC, Schools and Libraries Division, to Beverly Lewis, Mathematics and Science Center (dated Nov. 30, 2006) (MSC ADL); Letter from USAC, Schools and Libraries Division, to Fitzgerald Hoskins, Municipal Telephone Exchange (dated Feb. 2, 2006) (Municipal ADL) (collectively, ADLs). Oregon and Santa Clara submitted appeals of USAC's FCDLs directly to the Commission.

²¹ See Appendix. Municipal filed its appeal with USAC when it should have filed the appeal with the Commission. See Municipal Request for Review. In the interest of administrative efficiency, USAC transmitted the appeal directly to the Commission rather than returning the appeal to the applicant. We therefore consider its appeal as filed with the Commission.

²² See Appendix. The Bureau shall conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723.

the ground that these consortia leaders did not provide evidence of authority to represent the consortium members.²³

9. Dutchess, Erie, Georgia, and Oregon. Our review of the record on appeal reveals that each of these consortium leaders have provided sufficient evidence to the Bureau demonstrating that they were authorized to represent their consortium members. Specifically, Dutchess provided a copy of its LOA and power of attorney showing that it was authorized to submit an FCC Form 471 application on behalf of Ulster County BOCES.²⁴ Georgia submitted a copy of its consultant agreement for each consortium member indicating that each member authorized the consultant to submit an FCC Form 471 on its behalf.²⁵ Georgia also submitted a copy of a memorandum sent to the consortium members providing details concerning their FCC Form 471 application and the filing process.²⁶ Erie and Oregon provided copies of LOAs from each of their respective consortium members requesting funding.²⁷ Each LOA follows the format and content suggested by USAC.²⁸ After reviewing the underlying record, we find that Dutchess, Georgia, Erie, and Oregon have provided documentation, which taken together, identifies the name of the person authorizing the filing of the application; the specific timeframe covered by the representation; the signature, date, and title of an official who is an employee of the entity authorizing the filing of the application; and the type of services covered. Because this documentation contains all of the same information as required in an LOA, we find that such documentation sufficiently establishes their authority to represent the consortium members.

10. MSC. To show that it was authorized to submit an FCC Form 471 application on behalf of its consortium members, MSC submitted a draft budget illustrating the funds allocated to E-rate, board meeting minutes confirming that all of the consortium members were present and that they discussed the proposed budget for funding year 2006-2007, information about the superintendents of each school in the consortium, a copy of its bylaws stating that member school divisions are owners of MSC and are therefore members of the consortium, and executed FCC Forms 479 (*i.e.*, Child Internet Protection Act (CIPA Form)) from each superintendent of the schools in the consortium certifying that he/she is the administrative authority for the school requesting discounts.²⁹ We find that this documentation, taken together, demonstrates the consortium members' knowledge that an FCC Form 471 application would be

²³ See Dutchess ADL; Erie ADL; Georgia ADL; Hacienda ADLs; MSC ADL; Oregon FCDL. With regard to Dutchess's application, USAC found that Dutchess did not have evidence of authority for one consortium member, Ulster County BOCES. See Dutchess ADL.

²⁴ See Dutchess Request for Review at 8-9, Appendices 2 and 4. See also Letter from Juliann Troiano, Dutchess BOCES, and Ari Fitzgerald, Hogan, Lovells, US LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Sept. 16, 2010) (Supplement to Dutchess Request for Review) (clarifying that Dutchess seeks review of USAC's decision regarding six FRNs contained in Dutchess' FCC Form 471 application number 463991- FRNs 1310074, 1310095, 1310123, 1310150, 1310173, and 1310213- and that it has cancelled the remaining 36 FRNs contained in this application.)

²⁵ See Georgia Request for Review at 3-4, Exhibits A and E.

²⁶ *Id.* at Exhibit B.

²⁷ See Erie Request for Review at 1-2; Letter from Patrick Doyle, Erie 1 Board of Cooperative Educational Services Education Campus, to USAC, Schools and Libraries Division, at Attachment 2 (dated Feb. 20, 2007) (Erie funding year (FY) 2006 USAC Appeal); see also Oregon Request for Review at Exhibits 2 and 4.

²⁸ See Erie FY 2006 USAC Appeal, at Attachment 2; Oregon Request for Review at 9-10, Exhibits 2 and 4.

²⁹ See MSC Request for Review at 4, and Attachments A, B, C.

filed on their behalf, the types of services covered by the application and the funding year covered by the application.³⁰

11. *Hacienda*. USAC denied Hacienda's funding request because Hacienda failed to provide proof of authorization to represent all entities listed on the FCC Form 471 application or proof of their membership in the consortium.³¹ In its request for review, Hacienda states that all K-12 schools in the Hacienda School District and the County of Los Angeles Public Library are members of a consortium entitled "Hacienda Heights/La Puente Libraries School Access Project" (Project).³² Hacienda explains that, as part of the Project, it created extended learning centers for its students in two Los Angeles County libraries, the Hacienda Heights Library and the La Puente Library.³³ According to Hacienda, these centers provide students with the opportunity to use district-owned computers to access the Internet.³⁴ Hacienda states that neither center incurred any financial responsibility for the payment of bills associated with the computers or Internet access services on the Hacienda consortium application.³⁵ When preparing its FCC Form 471 application, Hacienda was unsure whether it should apply as a school district or a consortium because neither center's property is owned by the Hacienda School District.³⁶ Ultimately, Hacienda determined that "consortium" was the billed entity type that most closely described its unique circumstances.³⁷ Thus, on appeal, Hacienda asks the Commission to find that a valid consortium exists.³⁸ In the event that the Commission does not find a valid consortium, Hacienda requests that the Commission remove the library locations from the application and direct USAC to process its application as a school district application.³⁹ In support of its request, Hacienda has provided a copy of two letters dated June 19, 2000, and March 9, 2005, demonstrating that all K-12 schools in the Hacienda School District and the County of Los Angeles Public Library are members of a consortium entitled "Hacienda Heights/La Puente Libraries School Access Project" and that they were aware of the FCC Form 471 filed on their behalf seeking funding for Internet access services.⁴⁰

³⁰ *Id.* at 3-4, Attachment C.

³¹ *See* Hacienda ADL.

³² *See* Hacienda Request for Review at 2-3.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 4.

³⁶ *Id.* at 2.

³⁷ *Id.*

³⁸ *Id.* at 5.

³⁹ *Id.*

⁴⁰ *Id.* at 2-3, Exhibit B. Specifically, Hacienda provides a copy of a letter to USAC from Michael G. Droe on behalf of the Hacienda school district explaining the consortium's purpose. *Id.* at Exhibit B. Hacienda also provides a copy of a letter to USAC from Gary Y. Matsumoto, Hacienda's Assistant Superintendent-Business Services, which lists all of the Hacienda district K-12 schools that are members of the consortium. *Id.* Finally, Hacienda provides a copy of a letter from Wendy Romano, the Assistant Director of the Los Angeles County Public Library, which sets forth the final guidelines for the "Hacienda Heights/La Puente Libraries School Access Project." *Id.* Representatives from the Hacienda School District and the County Public Library were copied on the letter. *Id.*

12. After reviewing the record, we find that the Hacienda consortium is valid and that the letters submitted on appeal demonstrate that each of the consortium members authorized the submission of an FCC Form 471 application on their behalf.⁴¹ Specifically, we find that the letters dated June 19, 2000 and March 9, 2005, taken together, identify the name of the person authorizing the filing of the application; the specific timeframe covered by the representation; the signature, date, and title of an official who is an employee of the entity authorizing the filing of the application; and the type of services covered. We find that such documentation sufficiently establishes Hacienda's authority to represent the consortium members.

B. Deficient LOAs Remedied by Evidence on Appeal

13. USAC denied the applications of Cornerstones of Care (Cornerstones), Santa Clara County Office of Education (Santa Clara), and Erie because their LOAs did not authorize the services requested on their FCC Form 471 applications.⁴² On appeal, Cornerstones, Santa Clara, and Erie argue that they authorized the services requested on their FCC Forms 471.⁴³ Specifically, Cornerstones explains that its LOA described the services for which it was requesting support as "eligible services," consistent with guidance provided on USAC's website.⁴⁴ Moreover, Cornerstones argues that all of the services for which it requested discounts were clearly defined in its technology plan, which was completed prior to the submission of its FCC Form 471 application.⁴⁵ Santa Clara explains that it provided two versions of an LOA to applicants in its consortium.⁴⁶ The first version stated that the E-rate applications were for "eligible shared infrastructure costs needed to provide Internet access."⁴⁷ The second version referred generally to "E-rate services," consistent with USAC guidance noted above.⁴⁸ Each version was provided to applicants and also contained a cover letter that described the services with more specificity.⁴⁹ Thus, Santa Clara argues that applicants should have been aware that they were authorizing Santa Clara to seek funding for Internet access on their behalf.⁵⁰ Erie states that it made a mistake on the attachment to its LOA in describing the requested services as "POTS" (*i.e.*, plain old telephone service) rather than "digital transmission service," as indicated on its LOA.⁵¹ Erie explains that all of the funding requests at issue requested dial-up data telecommunications via phone lines for the purpose of accessing the school

⁴¹ *Id.*

⁴² *See* Cornerstones ADL; Santa Clara FCDLs; Erie 2006 ADL.

⁴³ *See* Cornerstones Request for Review at 1; Santa Clara Request for Review at 1-2; Erie FY 2006 USAC Appeal.

⁴⁴ *See* Cornerstones Request for Review at 1, Attachment 4; USAC website, Schools and Libraries, Letters of Agency, at <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (last visited Oct. 25, 2010) (stating that the description of the services for which funding is being requested can be as general as "all E-rate eligible services" or it can be more restrictive).

⁴⁵ *See* Cornerstones Request for Review at Attachments 3 and 4.

⁴⁶ *See* Santa Clara Request for Review at 1-2.

⁴⁷ *Id.* at Attachment 1.

⁴⁸ *Id.* at Attachment 2.

⁴⁹ *Id.* at Attachment 3.

⁵⁰ *Id.* at 1-3.

⁵¹ *See* Erie FY 2006 USAC Appeal.

district's data network.⁵² Erie provides copies of its LOAs identifying the services at issue (*i.e.*, “digital transmission services, Internet access/Internet 2 access, network equipment maintenance for hubs, routers, and switches”).⁵³ Erie argues that it received authorization from every district in the consortium to submit an FCC Form 471 on its behalf.⁵⁴ After reviewing the underlying record, we find that the evidence submitted on appeal by Cornerstones, Santa Clara, and Erie remedies the deficiencies in their LOAs and that their consortium members were aware of the types of services being requested on their behalf.

14. *Hacienda and Georgia.* USAC denied Hacienda and Georgia's funding requests because the LOAs submitted during the application review process did not include the specific funding year to be covered by the LOA.⁵⁵ On appeal, Hacienda provides a copy of a letter to USAC, dated before the submission of Hacienda's FCC Form 471 application, explaining the consortium's purpose and the length of time that the consortium would continue to operate.⁵⁶ Georgia's consultant, Gemini Consulting Group, Inc. (Gemini), signed Georgia's FCC Form 471 application, and provided USAC an LOA to demonstrate that the consultant had authorization to file the application.⁵⁷ Georgia provided the Commission a copy of its consulting agreement with Gemini and LOAs which, taken together, show that the LOAs cover funding year 2006.⁵⁸ After reviewing the record, we accept this documentation as evidence of the specific funding years covered by Hacienda and Georgia's respective LOAs.

15. *Municipal.* Municipal challenges USAC's decision to deny its funding request because its LOAs were not dated before the submission of its funding year 2005 FCC Form 471.⁵⁹ As the Bureau determined in the *South Carolina CIO Order*, USAC did not provide sufficient notice for consortia applicants to comply with a new policy established in funding year 2005, which requires applicants to obtain proof of representation from each consortium member prior to the certification date of their FCC

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See Hacienda ADL; Georgia ADL. See also *supra*, n. 23.

⁵⁶ See Hacienda Request for Review at Exhibit B.

⁵⁷ See Letter from USAC, Schools and Libraries Division, to Kyle B Tekell, Gemini Consulting Goup, Inc., on behalf of Heart of Georgia RESA (dated Apr. 10, 2006).

⁵⁸ See Georgia Request for Review at 3-5, Attachments A, E. According to these documents, the consulting agreement was signed on January 6, 2006. *Id.* at Attachment E. The LOAs were signed on January 9 and January 12, 2006. *Id.* at Attachment A. The LOAs describe the types of services to be provided by Gemini Consulting Group, Inc. (Gemini), such as assisting in determining eligible services, assisting with the competitive bidding process, filing the FCC Form 471 application, and facilitating application reviews. *Id.* The consulting agreement provides a cost and payment schedule for Gemini's consulting services and sets forth the length of the consulting contract, *i.e.*, from “the date of execution of [the] agreement, [(*i.e.*, January 6, 2006)] to [the] end of the application process.” See Georgia Request for Review at 3-4, Attachment E.

⁵⁹ See Municipal Request for Review.

Form 471 applications.⁶⁰ Consistent with precedent, we find that USAC should not have denied Municipal's application for failure to comply with the new USAC procedure for funding year 2005.⁶¹

16. *Great Western*. USAC denied Great Western's funding request because its LOA was not dated before the submission of its FCC Form 471 application.⁶² Because Great Western's request was for funding year 2008, it should have complied with USAC's policy that proof of representation had to precede FCC Form 471 filings.⁶³ In its request for waiver, Great Western explains that five months after it had obtained signed LOAs from its consortia members, it merged with several non-member schools, known as the Spice Network Consortium (Spice).⁶⁴ At the time of the merger, Great Western maintains that Spice authorized Great Western to file E-rate applications on its behalf.⁶⁵ During the consortium review process, Great Western provided LOAs from all of its consortium members; however, USAC denied its application because the LOAs from the Spice schools were signed after the FCC Form 471 application postmark date.⁶⁶ Great Western states that the intent for authorization was met in a timely matter, albeit not in the proper form.⁶⁷ Thus, Great Western asks the Commission to allow it to file its LOAs for the Spice schools for funding year 2008 after the certification of its FCC Form 471 application.⁶⁸

17. Consistent with precedent, we allow Great Western to obtain and submit to USAC updated LOAs for the 2008 funding year from all of its Spice members within 30 days from the release date of this order to ensure that each school authorized Great Western to apply on its behalf.⁶⁹ Although the LOAs provided to USAC during the consortium review process were dated after the certification date of Great Western's FCC Form 471 application, the record shows that the Spice members actually authorized Great Western to submit E-rate applications on their behalf before the form's certification date.⁷⁰ We find that denying the entire application under these circumstances would unfairly penalize the entire consortium

⁶⁰ *Id.* See also *supra*, para. 4.

⁶¹ See *South Carolina CIO Order*, 21 FCC Rcd at 5990-91, para. 8.

⁶² See *Great Western Network FCDL*.

⁶³ See *supra* n. 12.

⁶⁴ *Id.* at 1. On July 11, 2007, all of Great Western's consortium members signed LOAs authorizing Great Western to file E-rate applications on their behalf. *Id.* On December 6, 2007, non-member schools from Spice agreed to merge with Great Western and authorized Great Western to submit E-rate applications on its behalf. *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 2.

⁶⁷ *Id.*

⁶⁸ See *Great Western Request for Waiver* at 2.

⁶⁹ See *Kan-ed Order*, 21 FCC Rcd 13658; *Project Interconnect*, 16 FCC Rcd at 13655.

⁷⁰ As noted above, Spice agreed to merge with Great Western on December 6, 2007 and, at that time, authorized Great Western to submit E-rate applications on its behalf. See *Great Western Request for Waiver* at Attachment 3. Great Western then submitted its FCC Form 471 application on behalf of all consortium members on January 30, 2008. See FCC Form 471, *Great Western Network* (filed Jan. 30, 2008).

where only a few members of the consortium failed to produce the requested documentation.⁷¹ Accordingly, we direct USAC to accept Great Western's LOAs.

18. We therefore grant these 10 appeals and remand the underlying applications associated with these appeals to USAC for further action consistent with this order.⁷² In addition, there is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements in the record at this time. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.⁷³ 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 this standard is not met. To ensure that these applications are resolved expeditiously, we direct USAC to complete its review of the underlying applications listed in the appendices and issue an award or a denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.⁷⁴

19. We emphasize the limited nature of this decision. Our action here does not eliminate USAC's requirement that an applicant applying for funding on behalf of an eligible school, library, or consortium that includes eligible schools and libraries have signed LOAs in place containing the elements discussed above.⁷⁵ We continue to require E-rate applicants to submit complete and timely information to USAC as part of the application review process.

20. Finally, 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 these appeals, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or 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 disbursed 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

⁷¹ See *Project Interconnect*, 16 FCC Rcd at 13661, para. 14.

⁷² We estimate that the appeals granted in this order involve applications for approximately \$5.7 million 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 Fourth Quarter 2010 (Aug. 2, 2010). We thus determine that the action we take today should have minimal impact on the universal service fund as a whole.

⁷³ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or 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.

⁷⁴ 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 any and all grounds for denial.

⁷⁵ See *supra* para. 3.

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 the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

21. 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, 54.722(a), that the requests for review listed in the appendix ARE GRANTED and the applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

22. IT IS FURTHER 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 sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a) that Great Western Network's request for waiver IS GRANTED, as described herein.

23. IT IS FURTHER 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, 54.722(a), that USAC SHALL COMPLETE its review of the remanded applications and SHALL ISSUE an award or a denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.

24. 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

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

APPENDIX

Petitioner	Application Number	Funding Year	Date Appeal Filed
Cornerstones of Care Kansas City, MO	586498	2007	10/04/2007
Dutchess County Board of Cooperative Educational Services Poughkeepsie, NY	463991	2005	07/12/2006
Great Western Network Washburn, ND	609143	2008	09/09/2008
Erie 1 BOCES Education Campus West Seneca, NY	504046	2006	04/11/2007
Hacienda La Puente Unified School District City of Industry, CA	497721 497903	2006	03/19/2007
Heart of Georgia RESA/Gemini Consulting Group, Inc. Macon, GA	536185	2006	02/21/2007
Mathematics and Science Center Richmond, VA	503384	2006	02/02/2007
Municipal Telephone Exchange Baltimore, MD	480648 483475	2005	03/07/2007
Oregon Department of Administrative Services Salem, OR	460103	2005	03/22/2006
Santa Clara County Office of Education San Jose, CA	510337 511227 512749	2006	05/08/2007