

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of a)
Decision of the)
Universal Service Administrator by)
Barberton City School District) File No. SLD-523254
Barberton, Ohio)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: February 18, 2011

Released: February 18, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we deny a request for review filed by Barberton City School District (Barberton) seeking review of a decision by the Universal Service Administrative Company (USAC) decreasing funding from the E-rate program (more formally known as the schools and libraries universal service program) for funding year 2006.1 Specifically, USAC reduced funding on the ground that Barberton’s requested discount levels were not supported by sufficient documentation.2 For the reasons discussed below, we deny Barberton’s request for review.

2. Background. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.3 The level of discount, which ranges from 20 percent to 90 percent, is determined primarily by the level of economic disadvantage of the applicant, with some schools and libraries located in rural areas receiving an additional discount of up to 10 percent.4 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

1 See Letter from Linda Schreckinger Sadler, Barberton City School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, (filed Sept. 4, 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 Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 See Letter from Schools and Libraries Division, Universal Service Administrative Company to Linda Schreckinger Sandler, Barberton City School District (dated Mar. 20, 2007) (Administrator’s Decision on Appeal).

3 See 47 C.F.R. §§ 54.501-54.503, 54.505(b)(3); 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) (1997 Universal Service Order) (subsequent history omitted).

4 See 47 C.F.R. § 54.505.

survey.⁵ 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.⁶ On the FCC Form 471 application, applicants are required to provide information that establishes their appropriate discount rate.⁷

3. In addition, Commission 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 second priority.⁸ 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.⁹

4. Barberton applied for discounted services for five schools for funding year 2006.¹⁰ On its FCC Form 471 application, Barberton indicated that it was eligible for discounted services at the 90 percent discount level.¹¹ Barberton submitted surveys to demonstrate its eligible discount rate to USAC.¹² USAC then issued funding commitment decision letter (FCDL) that decreased Barberton's requested discount level to 79 percent.¹³ USAC determined Barberton's discount rate by calculating the weighted average based on the number of students in each school sharing a portion of the shared

⁵ 47 C.F.R. § 54.505(b)(1).

⁶ The USAC website provides applicants with guidelines regarding survey content. *See* USAC website, Schools and Libraries Division, Survey Guidelines for Alternative Discount Mechanisms, <http://www.universalservice.org/sl/applicants/step05/alternative-discount-mechanisms.aspx> (last visited Nov. 17, 2010).

⁷ Block 4 of the FCC Form 471 application asks 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 National School Lunch Program (NSLP). *See* Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471). Schools choosing not to use an actual count of students eligible for the NSLP may use only certain federally approved alternative mechanisms and the relevant rule states 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 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 (November 2004) (Form 471 Instructions) at 8-9.

⁸ *See* 47 C.F.R. § 54.507(g)(1).

⁹ *Id.*

¹⁰ *See* FCC Form 471, Barberton City School District, filed Feb. 15, 2006.

¹¹ *Id.*

¹² *See* Administrator's Decision on Appeal at 1-2.

¹³ *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ryan Pendleton, Barberton City School District (dated Nov. 29, 2006) (Funding Commitment Decision Letter (FCDL))

services.¹⁴ 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 Barberton's funding requests for internal connections.¹⁵ Barberton received more than \$72,000 for telecommunications and Internet access services for funding year 2006. In February 2007, Barberton 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 survey documentation.¹⁶ USAC denied the appeal on the grounds that the documentation did not support the requested discount level.¹⁷ Barberton then submitted an appeal to the Commission in May 2007 stating that USAC's determination was incorrect and that USAC disregarded the survey documentation that supported Barberton's 90 percent discount level.¹⁸

5. *Discussion.* Based upon our review of the record, we deny Barberton's request for review. We find that Barberton was entitled to the 79 percent discount that USAC calculated, not the 90 percent discount that Barberton requested. The Commission's rules require USAC to calculate a school district's shared discount level by calculating an average based on the applicable discounts of all member schools.¹⁹ Furthermore, the Commission's rules require that the shared discount percentage be the weighted average of the applicable discount of all schools sharing a portion of the services, with the weighting based on the number of students in each school.²⁰ Prior to submitting the survey documentation, Barberton indicated that each of the schools qualified for a 90 percent discount; however, the survey results indicate that three of the schools qualified for an 80 percent discount and another school qualified for a 60 percent discount.²¹ Calculating the discount pursuant to the Commission's rules using the documentation provided by Barberton resulted in a shared discount level of 79 percent.²² Because funding for internal connections in funding year 2006 was not disbursed to applicants that qualified for a discount rate below 86 percent, Barberton cannot receive funding for internal connections as part of its funding year 2006 application.²³ Accordingly, Barberton's request for review is denied.

¹⁴ See FCDL at 5-6; Administrator's Decision on Appeal at 1-2.

¹⁵ Funding for priority 2 services in funding year 2006 was capped at the 86 percent discount level. See USAC website, Schools and Libraries Division, Schools and Libraries News Brief, <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=102> (last visited Nov. 17, 2010).

¹⁶ See Letter from Linda Schreckinger Sadler, Barberton City School District, to Schools and Libraries Division, Universal Service Administrative Company (dated Feb. 15, 2007).

¹⁷ See Administrator's Decision on Appeal at 2.

¹⁸ See Request for Review at 5-6.

¹⁹ See 47 C.F.R. § 54.505(b)(4).

²⁰ *Id.*

²¹ See Letter from Mary Beth Bell, Food Services Supervisor, Barberton City Schools, to Schools and Libraries Division, Universal Service Administrative Company (dated Oct. 16, 2006).

²² See Administrator's Decision on Appeal at 1.

²³ See *supra* n.18.

IV. ORDERING CLAUSES

6. 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 request for review filed by Barberton City School District, Barberton, Ohio, IS DENIED.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in 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

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau