

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver and Review of Decisions of the Universal Service Administrator by)	
)	
Alpine Union School District)	File No. SLD-499657
Alpine, CA)	
)	
Ashland School District 5)	File No. SLD-380280
Ashland, OR)	
)	
The Lake Grove School)	File No. SLD-593746
Medford, NY)	
)	
IVCI, on behalf of)	File Nos. SLD-410779, 410864
The Lake Grove School)	459991, 460574, 507526,
Medford, NY)	564901, 565000
)	
Mt. Lebanon School District)	File No. SLD-533062
Pittsburgh, PA)	
)	
Three Rivers Community Schools)	File No. SLD-466796
Three Rivers, MI)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6

ORDER

Adopted: April 13, 2011

Released: April 13, 2011

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

1. We grant six requests for review of decisions of the Universal Service Administrative Company (USAC) denying petitioners funding under the E-rate program (formally known as the schools and libraries universal service support program) for funding years (FYs) 2003 to 2008.¹ USAC denied

¹ Letter from Nancy von Langen-Scott, on behalf of Alpine Union School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 16, 2007) (Alpine Appeal); Letter from Loren Luman, Business Manager, Ashland Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 2, 2004); Letter from Joe Schmukler, CIO of IS, The Lake Grove School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 1, 2009) (Lake Grove Appeal I); Letter from Curtis Heath, IVCI, on behalf of, The Lake Grove School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Nov. 15, 2010) (IVCI Appeal); Letter from Christopher Stengel, Director of Technology, Mt. Lebanon School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 8, 2007) (Mt. Lebanon Appeal); Letter from Darsey Carnal, on behalf of Three Rivers Community Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 13, 2008) (Three Rivers Appeal). Note that two appeals were filed regarding The Lake Grove School. See Lake Grove Appeal; IVCI Appeal. We use the term “appeals” to generally refer to requests for review or waiver of decisions issued by USAC. Section 54.719(c) of the

petitioners funding on the grounds that they sought telecommunications services from providers that were not telecommunications carriers, in violation of E-rate rules.² We find that the service providers were telecommunications carriers, and direct USAC to complete its review of each underlying application and issue an award or denial no later than 90 calendar days from the release date of this order.

2. As an initial matter, we grant three petitioners waivers of the appeal filing deadline³ because the appeals were necessitated by the errors of others⁴ or because the appeal was filed within 60 days of the applicant receiving actual notice of a denial of funding.⁵ On the merits for all six appeals, consistent with our *Bay Shore Order* and based on our review of the record, we find that the service providers used by the petitioners for telecommunications services were all eligible telecommunications carriers under E-rate program rules.⁶ We find no evidence at this time of waste, fraud or abuse, and conclude that the petitioners in this instance should not be penalized for errors made by their service providers or USAC. Specifically, in five cases, the service providers had not yet properly registered themselves with USAC as telecommunications carriers.⁷ The telecommunications service providers for The Lake Grove School (Lake Grove) in FYs 2004-2008 and the Three Rivers Community Schools (Three Rivers) in FY 2005 failed to either file their FCC Form 499 or update their FCC Form 498, respectively, in a timely manner.⁸ Alpine Union School District (Alpine) and Mt. Lebanon School District (Mt. Lebanon) both purchased telecommunications service in FY 2006 from a carrier that merged with a registered telecommunications carrier in 2004, although the merged company did not update its FCC Form 498 to assign the former's SPIN to the registered telecommunications carrier until after the beginning of FY 2006.⁹ Therefore, we find that the carriers that provided service were telecommunications carriers when they provided the service, even if they had not properly updated their filings before providing service. With respect to the sixth case, we accept Ashland School District 5's

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 To receive E-rate discounts on "telecommunications services" applicants must purchase those services from entities legally recognized as "telecommunications carriers." See 47 U.S.C. § 254 (h)(1)(B).

³ See 47 C.F.R. § 54.720.

⁴ See Alpine Appeal at 1-2; Mt. Lebanon Appeal at 1 (their service providers were late in updating their FCC Form 498s).

⁵ See Three Rivers Appeal at 2.

⁶ See *Request for Review of the Decision of the Universal Service Administrator by Bay Shore Union Free School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-294923, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15537 (Wireline Comp. Bur. 2008) (*Bay Shore Order*).

⁷ See *Bay Shore Order*, 23 FCC Rcd at 15539-41, paras. 7-9 (granting appeals where the service providers were not properly registered).

⁸ An FCC Form 498 must be filed by every service provider that receives funding through the E-rate program to provide information about it and the services it provides as well as to be assigned a service provider identification number (SPIN). An FCC Form 499 must be filed by every telecommunications carrier to determine how much it must contribute to the universal service fund. Lake Grove used IVCI, SPIN 143023310, for FYs 2004-2008. See Lake Grove Appeal at 1; IVCI Appeal at 1. Three Rivers used Building Communications, Inc., SPIN 143026472. See Three Rivers Appeal at 1.

⁹ Alpine and Mt. Lebanon initially purchased service from Arch Wireless, which was not registered as a telecommunications carrier. Arch Wireless, however, subsequently merged with Metrocall in 2004 and USAC assigned the Arch Wireless SPIN 143018525 to Metrocall in 2006. See Alpine Appeal at 1-2; Mt. Lebanon Appeal at 1, 5-9. The merged company is now known as USA Mobility and it is the assignee of the SPIN at issue.

(Ashland) assertion that it was misled by its initial service provider to believe that the provider was a telecommunications carrier.¹⁰ Once Ashland discovered that the provider was not a telecommunications carrier, it filed a SPIN change request with USAC to switch to Oregon Telecommunications, which was a telecommunications carrier.¹¹ Thus, we grant Ashland the appropriate E-rate discount for the portion of the year that it received telecommunications service from Oregon Telecommunications for FY 2003, but not for any service it received from the ineligible carrier. To the extent necessary, we also waive section 54.504(c) of the Commission's rules, which requires that applications must be complete when filed, to enable these petitioners to correct any SPIN errors on their FCC Forms 471.¹²

3. 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, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Requests for Review and/or Requests for Waiver filed by Alpine Union School District, Ashland School District 5, The Lake Grove School, IVCI on behalf of The Lake Grove School, Mt. Lebanon School District, and Three Rivers Community Schools ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

4. 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 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3 of the Commission's rules, that sections 54.504(c) and 54.720 of the Commission's rules, 47 C.F.R. §§ 54.504(c) and 54.720, ARE WAIVED to the extent necessary as provided herein.

5. 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL COMPLETE its review of each remanded 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.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁰ Letter from Loren Luman, Business Manager, Ashland School District 5, to USAC, Schools and Libraries Division at 1 (dated Mar. 15, 2004) (Ashland Appeal to USAC).

¹¹ See *Bay Shore Order*, 23 FCC Rcd at 15541-44, paras. 10-13 (granting appeals where reorganizations by service providers caused their SPINs to change, USAC misinterpreted transitional periods for SPIN changes, or applicants chose ineligible Good Samaritan providers); Ashland Appeal to USAC at 1. Although Ashland submitted its SPIN change request prior to USAC's denial of its funding request, USAC chose not to consider its SPIN change request until after USAC had issued its funding commitment decision letter. See Letter from USAC, Schools and Libraries Division, to Loren Luman, Ashland School District 5 at 1-2 (dated May 21, 2004). Thus, the SPIN change request became moot once USAC denied its funding request.

¹² See 47 C.F.R. § 54.504(c).