

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

In the Matter of)	
)	
Request for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Bryan Independent School District)	File No. SLD-510883
Bryan, Texas)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: January 14, 2011

Released: January 14, 2011

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

1. We grant an appeal filed by Bryan Independent School District (Bryan) of a decision of the Universal Service Administrative Company (USAC) denying Bryan discounts under the E-rate program (more formally known as the schools and libraries universal service support program).¹ USAC denied Bryan funding on the grounds that more than 30 percent of the services Bryan sought to purchase were ineligible for E-rate discounts.² As discussed below, we find that the services Bryan sought to purchase were eligible for E-rate discounts. We therefore remand the underlying application to USAC for further action consistent with this order. To ensure that the underlying matter is resolved expeditiously, we direct USAC to issue an award or denial based on a complete review and analysis of the underlying application no later than 60 calendar days from the release date of this order.

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 Each year, the Commission determines the services that are eligible under the Commission’s current rules and releases a list of services eligible for E-rate funding.⁴ When USAC reviews an application and identifies an ineligible

¹ Letter from Jennifer Bergland, Chief Technology Officer, Bryan Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Apr. 17, 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).

² See Letter from USAC, Schools and Libraries Division, to Jennifer Bergland, Bryan Independent School District (dated Feb. 16, 2007) (USAC Appeal Decision); 47 C.F.R. § 54.504(d).

³ 47 C.F.R. §§ 54.501-54.503. See 47 C.F.R. § 54.504; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9003-9023, paras. 426-463 (1997) (*Universal Service First Report & Order*)(subsequent history omitted); Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806, at 23 (November 2004) (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities, or uses).

⁴ See 47 C.F.R. § 54.522.

service, it will deny funding for that service. Additionally, applicants must limit their funding requests for a particular funding year to only those services that the applicant seeks to use within that funding year.⁵ They may not seek discounts on purchases of services that will not be used until after the end of the funding year for which they are seeking discounts.⁶ Furthermore, if the amount requested for ineligible services exceeds 30 percent of the total amount for any individual funding request, section 54.504(d) of the Commission's rules requires USAC to deny the entire funding request.⁷

3. *Request for Review.* In funding year 2006, Bryan sought discounts on replacement batteries and refresher kits for an uninterruptible power supply (UPS) system.⁸ USAC denied eight of Bryan's funding requests (funding request numbers (FRNs) 1404847, 1404852, 1404853, 1404856, 1404860, 1404861, 1404862, and 1404870) as part of application number 510883.⁹ In response to Bryan's appeal, USAC explained that UPS refresher kits and replacement batteries are ineligible for E-rate discounts and that the amount requested for these ineligible items represented more than 30 percent of the total amount for each funding request.¹⁰ Bryan then filed the instant request for review with the Commission related to USAC's decision on four of its funding requests, FRNs 1404847, 1404852, 1404853, and 1404861.¹¹ Specifically, Bryan states that, for these four funding requests, it sought discounts on the UPS replacement batteries and refresher kits in order to replace the old batteries in the existing UPS system so that it can continue using the system rather than replacing it.¹² Bryan indicates that the batteries will not be placed in storage but will be used immediately.¹³ Bryan also argues that its decision to replace the old battery is more cost-effective than replacing the entire UPS, which is an eligible service.¹⁴

4. *Discussion.* We grant Bryan's appeal. It appears that USAC denied funding to Bryan based on the assumption that replacement batteries and refresher kits are generally purchases made as backup supplies, for use some time in the indefinite future, rather than for immediate use in the current funding year, and therefore are ineligible services. We find, however, that if replacement batteries and refresher kits are sought for use in the coming funding year as a more cost-effective alternative to purchasing an entire eligible UPS system, as appears to be the case with Bryan's purchase for funding

⁵ See *Universal Service First Report & Order*, 12 FCC Rcd at 9062, para. 544; 47 C.F.R. § 54.507(e); USAC website, Schools and Libraries, Service Delivery Deadlines and Extension Requests, <http://www.universalservice.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (last viewed Nov. 17, 2010) ("To be eligible for Program support, eligible services must be received during a specific period of time related to the particular funding year for which discounts are requested.").

⁶ *Id.*

⁷ See 47 C.F.R. § 54.504(d); *Second Report and Order*, 18 FCC Rcd at 9215-9216, paras. 38-41 (codifying the 30 percent rule).

⁸ A UPS, also called a battery backup, is a device that provides backup electric energy to a piece of equipment in case the event of a power failure. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Public Notice, FCC 08-265 (rel. Nov. 21, 2008).

⁹ USAC Appeal Decision at 1.

¹⁰ *Id.*; see *supra* para. 2.

¹¹ See Request for Review at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

year 2006,¹⁵ then they are functionally enabling the recipient to have an uninterrupted power source, which is an eligible service. We therefore remand the underlying application to USAC for further action consistent with this order. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the petitioner's application.¹⁶ To ensure that the underlying matter is resolved expeditiously, we direct USAC to issue an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.¹⁷

5. 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 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 Bryan Independent School District IS GRANTED and the application IS REMANDED to USAC for further consideration in accordance with the terms of this order.

6. 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 Bryan Independent School District's application and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁵ Request for Review at 1.

¹⁶ 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.

¹⁷ In performing a complete review and analysis of the underlying matter, USAC shall either grant the requested support, or, if denying it, provide the applicant with all grounds for denial.