

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

In the Matter of)	
)	
Request for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Cascade School District #422)	File No. SLD-254037
Cascade, Idaho)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 17, 2011

Released: May 17, 2011

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

I. INTRODUCTION

1. In this order, we deny a request for review by Cascade School District #422 (Cascade) seeking review of a decision of the Universal Service Administrative Company (USAC) denying funding under the E-rate program (more formally known as the schools and libraries universal service support program).¹ USAC rescinded the funding commitment for one of Cascade's funding requests on the ground that Cascade violated the Commission's competitive bidding requirements.² Upon review of the record, we find that Cascade is unable to demonstrate compliance with the Commission's competitive bidding rules and we, therefore, affirm USAC's decision. To the extent funds have already been disbursed under this funding request to Cascade, we direct USAC to continue recovery actions.

II. BACKGROUND

2. *E-rate Program Rules and Requirements.* 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 Commission's rules provide that these entities must seek competitive bids for all services

¹ Letter from Christopher P. Hinze, Cascade School District #422, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 10, 2006) (regarding funding year (FY) 2001 FCC Form 471 application number 254037, funding request number (FRN) 633827) (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 Christopher P. Hinze, Cascade School District 422 (dated Jan. 4, 2006) (Notice of Commitment Adjustment Letter (COMAD)).

³ 47 C.F.R. §§ 54.501-54.502.

eligible for support.⁴ An existing contract, however, signed on or before July 10, 1997, is exempt from the competitive bidding requirements.⁵

3. In accordance with the Commission's competitive bidding requirements, each applicant must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.⁶ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for eligible services.⁷ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services.⁸ The RFP must be available to all potential bidders for the duration of the bidding process.⁹

4. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹⁰ The Commission's rules require that an applicant must carefully consider all submitted bids prior to entering into a contract.¹¹ Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.¹² USAC assigns an FRN to each request for discounted services

⁴ 47 C.F.R. § 54.503.

⁵ See 47 C.F.R. § 54.511(c).

⁶ 47 C.F.R. § 54.503(c).

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No.96-45, Report and Order, 12 FCC Rcd 8776, 9078-79, para. 575 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

⁸ See *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (September 1999) (FCC Form 470); *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (October 2004) (current FCC Form 470).

⁹ See FCC Form 470.

¹⁰ 47 C.F.R. § 54.503(c). See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008) (*Approach Learning Order*).

¹¹ 47 C.F.R. § 54.511(a). Subsequent to FY 2001, the Commission revised its rules to provide that applicants must also select the most cost-effective service offerings, and price must be the primary factor in determining whether a particular vendor is the most cost-effective. See *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26406, 26429, para. 50 (2003). This rule was codified in 2003. See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2004) (codifying 47 C.F.R. § 54.511(a)); see also *School and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (codifying 47 C.F.R. § 54.504(b)(2)(vii) and 47 C.F.R. § 54.504(c)(1)(xi)).

¹² See *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2000) (FCC Form 471); *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (November 2004) (current FCC Form 471).

and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.¹³

5. Applicants may purchase eligible services from “master contracts” negotiated by a third party such as a governmental entity.¹⁴ The third party initiating the master contract must comply with the Commission’s competitive bidding requirements and state procurement laws.¹⁵ The applicant is not required to satisfy the Commission’s competitive bidding requirements if it takes service from a master contract that either has been competitively bid or qualifies for the existing contract exemption.¹⁶ If a third party has negotiated a master contract that does not qualify for the existing contract exemption, then the applicant must comply with the Commission’s competitive bidding requirements before it may receive discounts or reduced rates for services purchased from that master contract.¹⁷

6. *Request for Review.* On December 11, 2000, Cascade submitted its FCC Form 470 application to USAC to initiate the competitive bidding process for basic telecommunications service.¹⁸ On January 18, 2001, Cascade filed its FCC Form 471 application for FY 2001.¹⁹ On August 7, 2001, USAC approved Cascade’s funding request, FRN 633827.²⁰ During post-funding review, however, USAC determined that Cascade violated the Commission’s competitive bidding requirements, rescinded Cascade’s funding commitment for FRN 633827, and initiated action to reclaim the funds.²¹ Cascade subsequently appealed USAC’s action.²² USAC denied Cascade’s appeal, concluding that (1) the services for which Cascade sought funding were not properly posted to USAC’s website for competitive bidding,

¹³ See USAC website, Schools and Libraries, Funding Commitment Decision Letter, <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited May 10, 2011).

¹⁴ See 47 C.F.R. § 54.500(g) (defining “master contract” as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchase directly from the service provider.).

¹⁵ See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997) (*Fourth Reconsideration Order*).

¹⁶ *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233; see also 47 C.F.R. §§ 54.504, 54.511(c).

¹⁷ *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233.

¹⁸ FCC Form 470, Cascade School District 422 (posted Dec. 11, 2000).

¹⁹ FCC Form 471, Cascade School District 422 (filed Jan. 18, 2001) (Cascade FCC Form 471).

²⁰ Letter from USAC, Schools and Libraries Division, to Christopher P. Hinze, Cascade School District 422 (dated Aug. 7, 2001) (regarding FRN 633827).

²¹ See COMAD. During reviews of funding commitments, which can include program integrity assurance reviews, audits, appeal reviews, and other investigations, USAC may discover that certain funds were committed in error. In order to be sure that no funds are used in violation of program rules, USAC must then adjust those funding commitments. USAC refers to this process as “Commitment Adjustment” or COMAD. See USAC website, Schools and Libraries, Commitment Adjustment, <http://www.universalservice.org/sl/about/commitments-adjustments.aspx> (last visited May 10, 2011).

²² Letter from Christopher P. Hinze, Cascade School District 422, to USAC, Schools and Libraries Division (dated Mar. 17, 2006).

and (2) Cascade's FCC Form 470 did not comply with the competitive bidding requirement that the form be posted on the website for 28 days before Cascade selects a vendor.²³

7. In its request for review, Cascade admits that it made several mistakes when seeking funding for basic telephone service.²⁴ Cascade states that despite filing a Form 470 seeking basic telephone services, Cascade actually began receiving these services under a state master contract before it filed its Form 470.²⁵ Cascade contends that it mistakenly referenced this Form 470 on its FY 2001 application, even though the state master contract from which it took service was established through a competitive bidding process on June 22, 1997 and qualified as an existing contract.²⁶ Cascade further argues that providing an inaccurate FCC Form 470 should be treated as an unintentional clerical error and it should be allowed to proceed under the state master contract. Cascade also acknowledges other problems with its application. It notes that it should have indicated on its FCC Form 471 application that it was requesting services from a state master contract, rather than month-to-month services,²⁷ and that, when asked during the post-funding review process whether there was an FCC Form 470 filed at the state level, it mistakenly provided USAC with a Form 470 filed by the state for another year.²⁸

III. DISCUSSION

8. We conclude that USAC correctly denied Cascade's request for support. As explained above, Cascade states that it committed unintentional, clerical errors when it provided FCC Form 470 applications #628480000328260 and #850080000400067 to USAC during the application review process and that obtaining services under the state master contract should be considered sufficient to qualify it for funding.²⁹ In the past, we have found that ministerial or clerical errors alone do not necessarily warrant the complete rejection of an application for E-rate funding.³⁰ In this instance, however, we do not believe that the series of mistakes outlined above can be considered clerical in nature when we are unable to verify the execution date of the state master contract at issue. We also find that Cascade's reliance on a service received from a state master contract is insufficient to grant its request. Moreover, Cascade has failed to demonstrate that the state master contract at issue qualifies as an existing contract, as defined in

²³ Letter from USAC, Schools and Libraries Division, to Christopher P. Hinze, Cascade School District 422 (dated Oct. 12, 2006); 47 C.F.R. § 54.504(b)(4).

²⁴ See Request for Review at 1.

²⁵ *Id.*; see also Cascade FCC Form 471; *Universal Service First Report and Order*, 12 FCC Rcd at 9078-79, para. 575; 47 C.F.R. § 54.504(b)(4).

²⁶ See *supra* para. 2. The Commission's rules exempt existing contracts from the 28-day posting requirement for Forms 470. See 47 C.F.R. § 54.511(c).

²⁷ *Id.* at 4.

²⁸ See Request for Review at 2.

²⁹ See *supra* para. 6.

³⁰ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (finding that a significant number of applications for E-rate support were denied improperly for ministerial or clerical errors); *Request for Review of the Decision of the Universal Service Administrator by Aberdeen School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-297249, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (finding good cause to waive the Commission's 28-day posting requirement).

section 54.511(c) of the Commission's rules, because Cascade has never provided a copy of the executed contract despite having ample opportunity to do so.³¹ Based on the record before us, Cascade is unable to demonstrate compliance with the Commission's rules. Consequently, we affirm USAC's decision and deny Cascade's request for review.

IV. ORDERING CLAUSES

9. 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 pursuant to authority delegated under 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 request for review filed by Cascade School District #422 on October 10, 2006, IS DENIED.

10. IT IS FURTHER 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 pursuant to authority delegated under 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 Universal Service Administrative Company SHALL CONTINUE recovery actions with Cascade School District concerning the funding commitment for funding request number 633827 as part of Cascade School District's funding year 2001 application.

11. 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

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

³¹ See 47 C.F.R. § 54.511(c); see also *supra* para. 5. Further, the website address provided by Cascade that purportedly contains information about the state master contract is currently inoperable. See Request for Review at 2, 4. Cascade could have provided a copy of the executed contract with its appeal filed with USAC on March 17, 2006 and/or with the Commission on October 10, 2006.