

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Requests for Review )
of a Decision of the )
Universal Service Administrator by )
Ed Tec Solutions LLC ) File Nos. SLD-227397, 296639,
Lakewood, New Jersey ) 296676, 296686, 296755, 296759,
) 296861, 296886, 296908, 296908,
) 297630, 297754, 298476, 308856,
) 308862, 308913, 309082, 309566,
) 309611, 309626, 309865, 313070,
) 313224, 313361, 321198, 321351,
) 321391
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: August 10, 2012

Released: August 10, 2012

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

1. In this order, we grant the requests for review filed by Ed Tec Solutions LLC (Ed Tec) seeking review of a decision by the Universal Service Administrative Company (USAC) rescinding or denying funding for discounted services under the E-rate program (more formally known as the schools and libraries universal service support program) because Ed Tec’s contracts allowed payments to be made in installments after the work was completed.1 We remand the underlying applications to USAC for further action consistent with this order, and we direct USAC to review the underlying applications and issue an award or denial based on a complete review and analysis no later than 90 calendar days from the release of this order.

I. BACKGROUND

2. Pursuant to the E-rate program, eligible schools, libraries, and their consortia may apply for discounts for the purchase of eligible services.2 The program pays the discounted portion and the applicant pays the non-discounted portion.3 Until August 13, 2004, when the Commission adopted the

1 Letter from Eli Schwartz, Ed Tec Solutions LLC, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 31, 2003) (2003 Request for Review); and Letter from Eli Schwartz, Ed Tec Solutions LLC, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 18, 2005) (2005 Request for Review) (together, Requests 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) (2002).

2 47 C.F.R. §§ 54.501-54.503 (2002).

3 47 C.F.R. §§ 54.504(c)(1)(iii), 54.523 (2002).

*Fifth Report and Order*, the Commission had not set a deadline, after service delivery, for payment of the non-discounted portion.<sup>4</sup> The *Fifth Report and Order* established a presumption that payment of the non-discounted share was delinquent after 90 days subsequent to service delivery.<sup>5</sup> The new rule operated prospectively, and non-discounted payments made prior to the *Fifth Report and Order* were considered timely unless they remained unpaid upon the completion of an audit.<sup>6</sup>

3. In funding years 2001 and 2002, Ed Tec entered into agreements to install non-recurring services with 22 E-rate applicants.<sup>7</sup> Those contracts required the applicants to pay Ed Tec for the non-discounted portion of the cost of the services in deferred payments: 25 percent at completion and 25 percent every three months until the balance was paid.<sup>8</sup> USAC approved the single application that was submitted for funding year 2001, but subsequently rescinded its approval.<sup>9</sup> USAC denied all of the funding year 2002 applications.<sup>10</sup>

4. According to USAC, it denied the applications because the payment schedule created a mismatch in timing between when USAC and the applicants were obligated to pay the service provider.<sup>11</sup> Once an FCC Form 486 is filed, the service provider could receive invoice payments from USAC. By contrast, the applicant would not have to pay the service provider until after the project was completed.<sup>12</sup> USAC took the position that, as part of the Service Provider Annual Certification Form, FCC Form 473, the service provider is implicitly certifying that payment by USAC and by the applicant would occur at approximately the same time.<sup>13</sup> USAC also asserted that a deferred payment schedule violates the requirement that an applicant have the necessary resources to meet its E-rate payment obligations, by allowing payment after the services are implemented.<sup>14</sup> Finally, USAC explained that it denied the

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<sup>4</sup> See *Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order, 19 FCC Rcd 15808, 15816, para. 24 (2004) (*Fifth Report and Order*).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Appendix. These applicants collectively filed 31 applications with USAC, but two applicants withdrew their requests. They are Herbert G. Birch School for Exceptional Children, Flushing, New York, SLD Nos. 297647 and 308771; and Betty Shabazz International Charter School, Chicago, Illinois, SLD No. 308755.

<sup>8</sup> 2003 Request for Review at 7. 2005 Request for Review at 9. Ed-Tec Technology Products and Services Ed Tec Contract E-Rate Discount Program Ed Tec Contract, dated Jan. 17, 2002, at 2 (Ed Tec Contract).

<sup>9</sup> Letter from USAC to Orlando Rendon, Eugenio Maria De Hostos Charter School, dated Nov. 23, 2004 (Commitment Adjustment Letter). See 2005 Request for Review.

<sup>10</sup> See 2003 Request for Review. One funding year 2002 applicant, Maria L. Varisco Rogers Charter School, appealed to USAC and USAC denied the appeal. Letter from Teresa Segara, Maria L. Varisco Rogers Charter School, to Universal Service Administrative Company, dated Oct. 10, 2003; Letter from USAC to Teresa Segara, Maria L. Varisco Rogers Charter School, dated Jan. 17, 2006 (Administrator's Decision on Appeal).

<sup>11</sup> Commitment Adjustment Letter at 4 ("These certifications require the service provider to invoice applicants at the same time that it invoices SLD [Schools and Libraries Division, USAC].")

<sup>12</sup> *Id.* ("Your contract...provides that you are not responsible for paying the non-discount share owed to your service provider prior to the completion of the project, but that your service provider will begin invoicing SLD once work on the project commences. This contractual provision conflicts with program rules.")

<sup>13</sup> Universal Service for Schools and Libraries, Service Provider Annual Certification Form, OMB 3060-0856 (Oct. 1998) (FCC Form 473) at 2-3. Commitment Adjustment Letter at 4 ("Implicit in this certification is that payment is expected from the applicant at the same time it is expected from SLD.")

<sup>14</sup> Commitment Adjustment Letter at 4.

applications because, depending on when a project would be completed, some of the applicant's payments to the service provider could occur outside the funding year.<sup>15</sup>

5. In its Requests for Review, Ed Tec explained that deferred payment plans are a common and accepted business practice, and that they do not violate any Commission rules or USAC procedures.<sup>16</sup> According to Ed Tec the "current year" requirement means that current year obligations must be met with current year funds, but does not prohibit payment plans that extend into the next year.<sup>17</sup> Ed Tech points out that non-recurring services approved for a particular funding year can be implemented up to three months after the close of that funding year, and as such would be paid during the next funding year.<sup>18</sup> Finally, Ed Tec states that the E-rate program restrictions on the payment of the non-discounted portion of the services provided under the E-rate program are aimed at avoiding underpayment or non-payment of the applicant's obligation, not at contracts that require the applicant to pay in full.<sup>19</sup>

## II. DISCUSSION

6. We grant Ed Tec's Requests for Review. The Commission's rules do not set forth a specific time frame for determining when a beneficiary has failed to pay its non-discounted share. In adopting the *Fifth Report and Order*, in 2004, the Commission determined that "prospectively ... a failure to pay more than 90 days after completion of service (which is roughly equivalent to three monthly billing cycles) presumptively violates our rule that the beneficiary must pay its share."<sup>20</sup> However, the Requests for Review raise issues regarding funding years 2001 and 2002, at the time the applicants entered into their contracts with Ed Tec, the Commission's had not set time limits on deferred payments for the non-discounted portion of the payments for services. Moreover, the contracts at issue provided a very specific time table for payment. Therefore, we find that the contracts with Ed Tech did not violate the Commission's rules requiring beneficiaries to pay their share for services provided under the E-rate program.

7. We also find that, in and of themselves, the FCC Form 473 certifications do not require that the service provider seek payment from USAC at the approximate time it receives reimbursement from the E-rate applicant. Certifications 10 and 11 of the FCC Form 473 state that any invoices the service provider submits to USAC will be for services that "have been billed" to the applicant and "are based on invoices issued by the service provider" to the applicant. These certifications refer to the billing process, not the payment process, between the service provider and the applicant.

8. We also conclude that the Ed Tec contract is not in conflict with the program's necessary resources rule. In the Academy of Excellence Order, the Commission clarified the necessary resources rule requires that "(i) when filing their FCC Form 471, applicants have specific, reasonable expectations of obtaining the funding needed to ensure availability of the necessary resources ..."<sup>21</sup> Accordingly, we find that the applicants who contracted with Ed Tec complied with the necessary resources requirement so

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<sup>15</sup> Administrator's Decision on Appeal at 2 ("These provisions require applicants to pay their service provider from the funds budgeted within the relevant funding year."), citing 47 C.F.R. § 54.504(b)(2)(v) (1998).

<sup>16</sup> 2003 Request for Review at 4-5; 2005 Request for Review at 3-4.

<sup>17</sup> 2003 Request for Review at 7; 2005 Request for Review at 6.

<sup>18</sup> 2003 Request for Review at 7; 2005 Request for Review at 6.

<sup>19</sup> 2003 Request for Review at 4-5; 2005 Request for Review at 3-4.

<sup>20</sup> *Fifth Report and Order*, 19 FCC Rcd. at 15816, para. 24.

<sup>21</sup> *Requests for Review of the Decisions of the Universal Service Administrator by Academy of Excellence et al*, File Nos. SLD-361209, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8722, 8725-8728, para. 7 (2007) (Academy of Excellence Order).

long as they had a reasonable expectation of being able to pay Ed Tec for the non-discounted portion when those funds became due under the contract.

9. We also conclude that neither our rules nor USAC's procedures require that the applicant pay the service provider the discounted portion during the funding year. First, the applicants contracted with Ed Tec for non-recurring services. At a minimum, the applicants had until September 30, three months after the close of the funding year, to install the services. Thus, it would make no sense to require that all non-recurring services had to be paid for three months in advance of their installation deadline.

10. Finally, at this time, there is no evidence of waste, fraud or abuse in the record. We therefore grant Ed Tec's requests for review.<sup>22</sup>

### III. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED, pursuant to 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 Requests for Review filed by Ed Tec Solutions LLC on October 31, 2003 and January 18, 2005, ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

12. 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 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 USAC SHALL DISCONTINUE its recovery action against Eugenio Maria De Hostos Charter School to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>22</sup> USAC shall also cease recovery actions against Eugenio Maria De Hostos Charter School.

## APPENDIX

## Applications at Issue

Applicant	Application Number(s)	Funding Request Number(s)	Funding Year
Benjamin Banneker Charter Academy of Technology Kansas City, MO	308750	858127, 858149, 858174, 858202, 858227, 858257, 858282	2002
Betty Shabazz International Charter School Chicago, IL	296608	853599	2002
Brandon School Natick, MA	296639	806751	2002
Charter Institute Training Center Annex Ft. Lauderdale, FL	296676, 308856	863661, 863723, 863760, 863822, 864315, 864348, 864379, 864416, 864447, 864476, 864508, 864547, 864591, 864626, 864663, 864780, 864812, 864844, 864880, 864907, 864939, 864962, 864998, 865026, 862787, 862829	2002
Cheder Lubavitch Morristown, NJ	296686, 308862	859968	2002
Chimes School Baltimore, MD	296755	869234	2002
Cincinnati College Preparatory Academy Cincinnati, OH	296759, 308913	816559	2002
Crossroads Wilderness Institute Punta Gorda, FL	296861	850908	2002
Crystal Springs School Assonet, MA	309082	836753, 836903, 836931, 836966	2002
Dearborn Academy Dearborn, MI	296886	848563	2002
Destiny Educational Academy of Excellence Jacksonville, FL	296908	854306, 854314, 854323, 854329, 854346	2002
Eugenio Maria De Hostos Charter School Philadelphia, PA	227397	586094	2001
Generation Christian Academy Harrisburg, PA	309566	871205, 871211, 871218, 871222, 871225	2002
Graydon Manor School Leesburg, VA	297630, 309611	865179, 867495, 867519, 867538	2002

<b>Applicant</b>	<b>Application Number(s)</b>	<b>Funding Request Number(s)</b>	<b>Funding Year</b>
Green Chimneys School Brewster, NY	309626	870291, 870303, 870316, 870330, 870343, 870355, 870372	2002
Leary School of Virginia Alexandria, VA	313070	821165, 821195, 821221, 821230, 821267, 821334, 821362, 821516	2002
Leary School – Prince Georges County Oxon Hill, MD	309865	807646, 807724, 807783, 807806, 807843, 807858	2002
Maria L. Varisco Rogers Charter School Newark, NJ	297754, 313224	858127, 858149, 858174, 858202, 858227, 858257, 858282	2002
Meridian Public Charter School Washington, DC	313361	853225, 853238, 853251, 853265, 853279, 853298, 853313, 853323	2002
Waterford Country School Quaker Hill, CT	321351, 321391	853971, 854185, 854208, 854241	2002
Westchester Special Education School Yonkers, NY	298476	858752	2002
Yeshiva Bais Aharon Lakewood, NY	321198	853215	2002