

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of a Decision)	
of the Universal Service Administrator by)	
)	
Atlanta Public Schools)	File No. SLD-252678
Atlanta, Georgia)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: November 9, 2012

Released: November 9, 2012

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

I. INTRODUCTION

1. In this order, we grant an appeal of a decision by the Universal Service Administrative Company (USAC) denying an invoice submitted for non-recurring charges by Atlanta Public Schools' (Atlanta) service provider, BellSouth, for discounted services under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2001.¹ USAC denied the invoice on the ground it had only authorized support for recurring charges in funding request number (FRN) 634307. We remand the underlying application associated with this appeal to USAC for further action consistent with this order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² Applicants may request support for eligible services that are recurring, in which case the services must be installed during the relevant funding year, and for eligible services that are non-recurring, which are one-time services that must be installed by September 30 following the close of the relevant funding year.³

¹ Letter from Robert W. Beman, Chief Information Officer, Atlanta Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed June 2, 2003) (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) (2001).

² 47 C.F.R. §§ 54.501-54.503 (2001).

³ 47 C.F.R. § 54.507(d) (2001).

3. On January 17, 2001, Atlanta submitted an FCC Form 471 application to USAC, which included FRN 634307, for recurring and non-recurring services for 60 elementary schools for funding year 2001.⁴ During USAC's program integrity assurance (PIA) review of Atlanta's application, Atlanta agreed to change a portion of the amount requested from non-recurring to recurring charges.⁵ On August 1, 2001, USAC modified Atlanta's funding request and reclassified all of the services requested on FRN 634307 as recurring charges for telecommunications services, but did not notify Atlanta of this change.⁶ On August 7, 2001, USAC issued a Funding Commitment Decision Letter (FCDL) approving Atlanta's funding request and noting it had modified Atlanta's funding request, explaining only that the estimated recurring monthly charge requested by Atlanta was changed "to reflect the documentation provided by the applicant."⁷

4. After receiving the FCDL, Atlanta notified its service provider, BellSouth, to proceed with implementation of the requested services.⁸ In December 2002, BellSouth submitted invoices to USAC for reimbursement for services provided to Atlanta.⁹ USAC denied payment to BellSouth because the services included in the invoices were for non-recurring charges, but USAC had not authorized support for non-recurring charges.¹⁰ Atlanta appealed the denial of payment to USAC.¹¹ USAC denied the appeal on the grounds that Atlanta filed its appeal with USAC more than sixty days after USAC's FCDL to Atlanta.¹² Atlanta then filed the instant appeal with the Commission.¹³

5. In its appeal to the Commission, Atlanta argues that because the FCDL did not specify what changes USAC made to Atlanta's funding request, Atlanta did not have adequate notice of USAC's reclassification as recurring charges all of the non-recurring charges for services for which Atlanta sought E-rate support.¹⁴ Atlanta argues that USAC's denial of its appeal was not appropriate given that the

⁴ See FCC Form 471, Atlanta Public Schools (filed Jan. 17, 2001) (Original FCC Form 471).

⁵ Request for Review at 4; Letter from Harollyn E. Johnson, Atlantic Public Schools, to USAC, Schools and Libraries Division (dated Jul. 18, 2001) (directing USAC to change the designation for the data voice line service from a non-recurring to a recurring charge). USAC performs PIA reviews to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, Schools and Libraries, Program Integrity Assurance, <http://www.sl.universalservice.org/reference/6pia.asp> (last viewed Nov. 7, 2012).

⁶ See FCC Form 471, Atlanta Public Schools (dated Aug. 1, 2001) (Modified FCC Form 471).

⁷ See Letter from USAC, Schools and Libraries Division, to Arthur R. Scott, Atlanta Public Schools (dated Aug. 7, 2001) (FCDL). Atlanta originally requested funding for telecommunications services with a pre-discount amount of \$15,100,011 for non-recurring charges. See Request for Review at 2. USAC subsequently approved a pre-discount amount of \$14,986,518 with an 84 percent discount, for a final funding commitment decision of \$12,588,675. See FCDL at 6.

⁸ Request for Review at 2.

⁹ See *id.* at 3. BellSouth submitted an invoice under FRN 634307 in the amount of \$7,466,243. BellSouth Invoice No. 349837 (dated Oct. 20, 2002).

¹⁰ Request for Review at 2. Atlanta noted that no formal notice of the funding denial was submitted to BellSouth and that the information was communicated over the telephone.

¹¹ Letter from Robert W. Beman, Chief Information Officer, Atlanta Public Schools, to USAC, Schools and Libraries Division (dated Mar. 21, 2003) (USAC Appeal).

¹² Letter from USAC, Schools and Libraries Division, to Beverly L. Hall, Atlanta Public Schools (dated Apr. 3, 2003). The FCDL was issued on August 7, 2001, and the appeal was dated March 21, 2003. See FCDL; USAC Appeal.

¹³ See Request for Review.

¹⁴ *Id.* at 3-4.

FCDL and accompanying explanation were insufficient to put Atlanta on notice that there was an issue with the funding commitment.¹⁵ Atlanta also contends that its appeal was promptly submitted to USAC within 60 days of being notified that the invoice submitted by BellSouth was denied.¹⁶

III. DISCUSSION

6. We grant Atlanta's appeal. Based on the record before us, we find that Atlanta lacked adequate notice of USAC's reclassification of its telecommunications services from non-recurring to recurring charges, and USAC impermissibly denied the BellSouth invoice based on USAC's reclassification of the services sought by Atlanta. As discussed above, USAC modified Atlanta's funding request, but did not provide a sufficient notice to Atlanta of the funding change.

7. Based upon the facts and circumstances of this case, we find that USAC's complete rejection of the invoice is unwarranted. We therefore grant Atlanta's appeal and remand the underlying application and invoice to USAC for further processing consistent with this order. We instruct USAC to gather additional information from Atlanta to determine whether Atlanta's requested services for FRN 634307 were for non-recurring or recurring charges. If, after further inquiry, USAC finds that some or all of Atlanta's services are for non-recurring charges, then USAC shall process Atlanta's application for funding and the invoice submitted by BellSouth, Atlanta's service provider, accordingly. In remanding this application and invoice to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application. Moreover, we note that, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to program requirements. To the extent necessary, we also waive section 54.507(c) of the Commission's rules to allow USAC or Atlanta to correct any errors on Atlanta's FCC Form 471.¹⁷ To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the underlying application and invoice, and either grant or deny BellSouth's invoice based upon a complete review and analysis, no later than 90 days from the release date of this order.

IV. ORDERING CLAUSES

8. 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 Atlanta Public Schools, Atlanta, Georgia, on June 2, 2003 IS GRANTED and the application IS REMANDED to USAC for further consideration in accordance with the terms of this order.

9. 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, 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 section 47 C.F.R. § 54.507(c) IS WAIVED to the extent provided herein.

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ 47 C.F.R. § 54.507(c) (2001).

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 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 COMPLETE its review 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

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