

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

In the Matter of)	
)	
Request for Review of a Decision of the Universal Service Administrator by)	
)	
International Business Machines, Inc.)	
)	
and)	
)	
Ysleta Independent School District El Paso, Texas)	File No.: SLD-179273
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: November 14, 2012

Released: November 14, 2012

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

1. Consistent with E-rate program rules and procedures in effect at the relevant time,¹ we grant requests for review filed by International Business Machines, Inc. (IBM) and Ysleta Independent School District (Ysleta) of a commitment adjustment (COMAD) decision issued by the Universal Service Administrative Company (USAC) seeking to recover funds disbursed to IBM for funding year 2000 under the E-rate program (more formally known as the schools and libraries universal service program).²

2. Background. In January 2000, Ysleta applied for E-rate funding pursuant to a 1998 technology plan and contracted with IBM to provide internal connections, including routers, to its schools.³ USAC subsequently issued a funding commitment decision letter (FCDL) committing \$1,335,659.12 in E-rate support to Ysleta for internal connections, and Ysleta

¹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26919, para. 17 (2003) (*Schools and Libraries Third Report and Order*) (stating that the rules, at that time, permitted applicants to upgrade their equipment on a yearly basis, even when existing equipment continues to have a useful life).

² See Letter from David B. Brown, on behalf of IBM Americas – Southern and Southwestern Region, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 18, 2005) (IBM Request for Review); Letter from Clyde A. Pine, Jr., on behalf of Ysleta Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 7, 2005) (Ysleta 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).

³ See FCC Form 471, Ysleta Independent School District (filed Jan. 22, 2000); Ysleta Request for Review at 8.

installed the equipment for which it requested support, including the routers.⁴ In 2001, Ysleta developed another technology plan after its network requirements surpassed the configuration supported by its 1998 technology plan.⁵ Consistent with that technology plan, in 2002, Ysleta implemented a high-speed wide area network that required it to uninstall these E-rate funded routers. After nineteen months of use, Ysleta placed the routers in storage intending to use them for a planned Voice over Internet Protocol (VoIP) project.⁶

3. USAC subsequently conducted an audit of Ysleta and found 37 routers purchased by Ysleta with E-rate funds in storage and not being used by the Ysleta schools.⁷ In light of its audit findings, USAC issued a COMAD decision to IBM seeking reimbursement of \$208,990.80 from IBM, representing the discounted cost of the 37 routers that had been uninstalled.⁸ Ysleta and IBM appealed USAC's decision to USAC.⁹ USAC denied Ysleta's appeal, stating that "applicants are accountable for carefully developing their technology plan, and utilizing the equipment requested and obtained with E-rate support properly and efficiently."¹⁰ USAC also denied IBM's appeal stating that there was wasteful use of the equipment since Ysleta did not convey whether the routers were ever connected or in use.¹¹

4. Ysleta and IBM then filed the instant appeals with the Commission.¹² Both Ysleta and IBM argue that the E-rate program does not have a specific requirement regarding the minimum use for equipment, and therefore, they should not be required to reimburse USAC for telecommunications equipment that was once installed and in use.¹³ Ysleta also contends that

⁴ See Letter from USAC, Schools and Libraries Division, to Bill Richardson, Ysleta Independent School District (dated May 5, 2000) (FCDL).

⁵ See Ysleta Request for Review at 8; FCDL at 3; Information Technology Plan 2001-2004, Ysleta Independent School District (2001 Technology Plan).

⁶ See Ysleta Request for Review at 11-12. Ysleta did not implement the VoIP project. *Id.* at 7, 12-14.

⁷ See Letter from KPMG, LLP, to USAC, Schools and Libraries Division (dated Jun. 24, 2003) (Ysleta Audit Report).

⁸ See Letter from USAC, Schools and Libraries Division, to John Policastro, International Business Machines Corporation, at 1-2 (dated May 13, 2004) (COMAD Letter).

⁹ See Letter from Clyde A. Pine, Jr., on behalf of Ysleta Independent School District, to USAC, Schools and Libraries Division (dated Jul. 6, 2004) (Ysleta July 2004 USAC Appeal); Letter from David B. Brown, IBM Americas-Southern and Southwestern Regions, to USAC, Schools and Libraries Division (dated Jul. 12, 2004) (IBM USAC Appeal); Letter from Clyde A. Pine, Jr., on behalf of Ysleta Independent School District, to USAC, Schools and Libraries Division (dated May 12, 2005) (Ysleta May 2005 USAC Appeal); Ysleta Request for Review at 11-12.

¹⁰ See Letter from USAC, Schools and Libraries Division, to Clyde A. Pine, Jr., on behalf of Ysleta Independent School District (dated Oct. 18, 2005) (Ysleta Administrator's Decision on Appeal).

¹¹ See Letter from USAC, Schools and Libraries Division, to David B. Brown, IBM Americas-Southern and Southwestern Regions (dated Nov. 16, 2004) (IBM Administrator's Decision on Appeal).

¹² See Ysleta Request for Review; IBM Request for Review.

¹³ See Ysleta Request for Review at 20-22; IBM Request for Review at 5-6.

USAC's determination is based on an erroneous conclusion that Ysleta failed to carefully develop a technology plan that efficiently utilized the requested equipment.¹⁴

5. Discussion. Based upon our review of the record, we grant Ysleta's and IBM's requests, and we find that Ysleta did not violate the E-rate program rules in effect for funding year 2000. Specifically, in funding year 2000, the rules did not prohibit E-rate applicants from upgrading their equipment on a yearly basis, even when the existing equipment continued to have a useful life.¹⁵ In this instance, Ysleta installed and used the routers for 19 months for educational purposes pursuant to its 1998 technology plan.¹⁶ By 2001, Ysleta's network requirements had surpassed the configuration supported by its 1998 technology plan; therefore, Ysleta developed another technology plan and uninstalled certain equipment, including the 37 routers, that were insufficient to meet the needs of the wide area network that Ysleta installed pursuant to its new technology plan.¹⁷ We conclude that Ysleta's decision to uninstall the E-rate funded routers was not unreasonable, and that Ysleta complied with the Commission's rules in effect at that time by using the routers for 19 months for educational purposes before uninstalling and placing them in storage in accordance with a Commission-required updated technology plan. We therefore find that, in this instance, IBM is not required to reimburse USAC the \$208,990.80.¹⁸ We thus grant Ysleta's and IBM's requests for review and direct USAC to discontinue its recovery action against IBM.

¹⁴ See Ysleta Request for Review at 29-36.

¹⁵ See *supra* n.1. Subsequently, in 2003, the Commission adopted rules to limit the ability of schools and libraries to engage in wasteful or fraudulent practices when obtaining internal connections. See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26923, para. 26 (determining that recipients of support are expected to use all equipment purchased with universal service discounts at the particular location, for the specified purpose, for a reasonable period of time). Thus, in this instance, we apply the rules in effect prior to the *Schools and Libraries Third Report and Order* because Ysleta submitted its application prior to 2003.

¹⁶ See Ysleta Audit Report at 1; Ysleta Request for Review at 7.

¹⁷ See Ysleta Request for Review at 8. According to Ysleta, the routers in question were aging, expensive to maintain, and only supported one ethernet interface per router, which was insufficient for use in the wide area network. *Id.* at 8-11. According to Ysleta, it intended to use the older routers as part of a VoIP system planned for under the new technology plan, but that system was never built. *Id.* at 13-14

¹⁸ In 2001, in the *Commitment Adjustment Implementation Order*, the Commission established procedures to recover funds disbursed to parties that obtained the funds in violation of the Commission's E-rate program rules. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, 15 FCC Rcd 22975, 22980, para. 11 (2001). At that time, the Commission only authorized USAC to commence commitment adjustment recovery actions against the service provider. See *id.*

6. ACCORDINGLY, IT IS ORDERED that, 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 in 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), the requests for review filed by Ysleta Independent School District, El Paso, Texas, and International Business Machines, Inc. ARE GRANTED and ARE REMANDED to USAC for further action consistent with this order.

FEDERAL COMMUNICATIONS COMMISSION

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