

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the
Universal Service Administrator by
Fort Worth Independent School District
Fort Worth, Texas
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-203657, 203662
CC Docket No. 02-6

ORDER

Adopted: December 4, 2012

Released: December 4, 2012

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

1. In this order we grant a request for review filed by Fort Worth Independent School District (Fort Worth) of a decision issued by the Universal Service Administrative Company (USAC) seeking to recover funds disbursed to Fort Worth for funding year 2000 under the E-rate program (more formally known as the schools and libraries universal service support program).1

2. Fort Worth applied for E-rate funding for telecommunications services, Internet access, and internal connections for funding year 2000,2 and USAC issued funding commitment decision letters (FCDLs) to Fort Worth committing approximately \$5.3 million in E-rate support.3 Fort Worth later invoiced USAC approximately \$3.5 million for products and services it purchased pursuant to those FCDLs.4 Subsequently, USAC conducted an audit of Fort Worth that included site visits at five schools within the district.5 USAC determined that Fort Worth improperly invoiced USAC for un-documented

1 See Letter from Bill Richardson, Fort Worth Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 18, 2005) (regarding FCC Form 471 application numbers 203657 and 203662) (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 FCC Form 471, Fort Worth Independent School District (dated Jan. 19, 2000) (regarding FCC Form 471 application number 203657); FCC Form 471, Fort Worth Independent School District (dated Jan. 19, 2000) (regarding FCC Form 471 application number 203662).

3 See Letter from USAC, Schools and Libraries Division, to Warren Anderson, Fort Worth Independent School District (dated May 11, 2001) (regarding FCC Form 471 application number 203657) (FCDL 203567); Letter from USAC, Schools and Libraries Division, to Warren Anderson, Fort Worth Independent School District (dated Aug. 4, 2000) (regarding FCC Form 471 application number 203662) (FCDL 203662).

4 See Schools and Libraries Beneficiary Audit Report - Fort Worth Independent School District, Audit No. SL2003BE046, Executive Summary (dated Oct. 31, 2003) (USAC Beneficiary Audit Report).

5 USAC Beneficiary Audit Report.

recurring services, ineligible fees, and missing switches.<sup>6</sup> In light of its audit findings, USAC sent a commitment adjustment decision (COMAD) letter to Fort Worth seeking recovery in the amount of \$169,649.67.<sup>7</sup>

3. Fort Worth appealed USAC's COMAD letter for FRN 480360 regarding overbilling USAC for recurring telecommunications services. USAC denied Fort Worth's appeal.<sup>8</sup> Fort Worth then filed the instant request for review of USAC's entire audit decision, as well as USAC's decision rejecting Fort Worth's appeal with respect to FRN 480360.<sup>9</sup>

4. Based upon our review of the record,<sup>10</sup> we grant Fort Worth's request for review. With respect to the \$155,713.14 for recurring services that Fort Worth purchased pursuant to FRNs 480360 and 480362, on appeal, Fort Worth submitted detailed monthly billing statements with pre-discounted totals that support Fort Worth's appeal relating to those recurring services. With respect to the \$13,593.83 for four switches that USAC determined were missing, on appeal, Fort Worth has demonstrated that it properly purchased and installed those switches. More specifically, Fort Worth submitted documentation that it installed the switches, but later replaced the four switches with ones that had a greater capacity.<sup>11</sup> In funding year 2000, the Commission's rules did not prohibit E-rate applicants from upgrading their equipment on a yearly basis.<sup>12</sup> We find that Fort Worth's decision to upgrade the switches and move them to other locations within the school district was permissible under the Commission rules in effect at the time. Finally, we note that Fort Worth concedes that \$345.00 of the charges at issue for FRN 480360 were for late fees on past delinquencies and other ineligible charges and, therefore, should be recovered by USAC.<sup>13</sup> We therefore remand the underlying applications to USAC for further action consistent with

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<sup>6</sup> Specifically, USAC determined that for funding request numbers (FRN) 480360 and 480362, Fort Worth invoiced USAC for \$155,713.14 for recurring services for which it has insufficient supporting documentation, and, with respect to FRN 480360, Fort Worth invoiced USAC for \$345.00 for ineligible fees. USAC also sought recovery for \$13,593.83, related to FRN 452460, because Fort Worth lacked documentation for and could not locate four switches related to that funding request. *See* USAC Beneficiary Audit Report.

<sup>7</sup> *See* Letter from USAC, Schools and Libraries Division, to Warren Anderson, Fort Worth Independent School District (dated May 14, 2004) (COMAD Letter).

<sup>8</sup> *See* USAC Nov. 19 Letter.

<sup>9</sup> *See* Request for Review.

<sup>10</sup> The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723.

<sup>11</sup> *Id.*

<sup>12</sup> *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). 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 26912, 26919, para. 17 (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 Fort Worth submitted its application prior to 2003.

<sup>13</sup> *See* Request for Review at 4.

this order. Specifically, we direct USAC to issue a revised COMAD letter for the \$345.00 in erroneously disbursed funds.

5. 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 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 Fort Worth Independent School District, Fort Worth, Texas, IS GRANTED to the extent indicated herein and REMANDED to USAC for further action consistent 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 pursuant to authority delegated in sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL ISSUE a revised COMAD letter to Fort Worth Independent School District no later than 60 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

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