

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Sprint-Florida, Inc.
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-140214
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 deny a request for review filed by Sprint-Florida, Inc. (Sprint) of a decision issued by the Universal Service Administrative Company (USAC) seeking to recover funds disbursed to Sprint for services purchased from Sprint by Dade County Public Schools (Dade) in funding year 1999 under the E-rate program (formally known as the schools and libraries universal service support mechanism).1

2. Background. In April 1999, Dade requested E-rate support for telecommunications services and equipment, including internal connections, from Sprint for 156 sites within the Dade school district.2 The request included private branch exchange (PBX) systems whose components included four analog system modules (ASMs) and four analog terminal adaptors (ATAs) (together "PBX components") at each of the 156 sites.3 USAC subsequently issued a funding commitment decision letter (FCDL) for internal connections and the requested PBX components at each of the 156 sites.4

1 See Letter from Vonya McCann, Sprint-Florida, Inc., to Office of the Secretary, Federal Communications Commission, Docket No. 02-6 (filed Dec. 1, 2005) (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, Dade County Public Schools (filed Apr. 2, 1999).

3 See Letter from USAC, Schools and Libraries Division, to Christopher D. Schneider, Sprint Corporation, at 3 (dated Oct. 18, 2005) (Administrator's Decision on Appeal).

4 See Letter from USAC, Schools and Libraries Division, to Anthony Machado, Dade County Public Schools (dated July 20, 1999) (FCDL). The FCDL covered internal connections and PBX components consisting of 624 ASMs and 624 ATAs in total.

3. In December 2002, USAC conducted an audit of 21 of the 156 Dade school sites and determined that most of the funded PBX components were missing.⁵ Specifically, for the 21 sites audited, Dade had received E-rate funding for 168 PBX components, but USAC found only 42 PBX components (all 84 ATAs and half of the ASMs that should have been at those 21 sites were missing).⁶ Dade also provided physical inventory documentation to USAC for each of the 156 sites showing nearly all of the 624 ATAs and 143 of the 624 ASMs were not installed.⁷ In light of its audit findings and Dade's physical inventory, USAC sent Sprint a commitment adjustment letter (COMAD letter) directing Sprint to reimburse USAC \$424,888.30, representing the cost of all the funded internal connections, and the missing PBX components from the 156 sites.⁸

4. In August 2003, Sprint appealed USAC's COMAD letter, arguing that it owed USAC less than the full value of the PBX components.⁹ After appealing the USAC decision, Sprint conducted an internal audit of its Dade-related E-rate applications, including other applications not addressed herein, and identified multiple errors made by Sprint in seeking reimbursement from USAC for products and services provided pursuant to those applications.¹⁰ With respect to the instant matter, Sprint concluded that it owed USAC \$242,507.62 for internal connections, \$36,069.50 for 93 returned ASMs, and \$62,787.14 for the 624 missing ATAs. In a supplemental response to USAC, based on its internal audit, Sprint maintained that USAC's calculations regarding both the number of returned ASMs and the amount to be repaid to USAC for the missing PBX connections were incorrect.¹¹

5. In October 2005, USAC denied Sprint's appeal.¹² However, in light of Sprint's previous payment of \$341,363.26 for internal connections and missing PBX components, USAC reduced the amount outstanding from \$424,888.30 to \$83,525.04, representing the difference between the amount USAC paid Sprint for the PBX components and related internal connections, and the amount Sprint

⁵ See Schools and Libraries Beneficiary Audit Report – Miami-Dade Public Schools (SL2002BE009), USAC, Internal Audit Division (dated Jan. 17, 2003).

⁶ *Id.*

⁷ *Id.*

⁸ See Letter from USAC, Schools and Libraries Division, to Sprint Corporation (dated Jun. 30, 2003) (Commitment Adjustment (COMAD) Letter), at 5-140. USAC has authority 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) (*Commitment Adjustment Implementation Order*); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15255-15257, paras. 10-15 (2004) (*Schools and Libraries Fourth Report and Order*).

⁹ See Letter from Christopher D. Schneider, Sprint Corporation, to USAC, Schools and Libraries Division, at 2 (dated Aug. 28, 2003) (Sprint Appeal).

¹⁰ See Letter from Michael P. Allen and Nancy L. Shelledy, Sprint Corporation, to USAC, Schools and Libraries Division, at 5-6 (dated Jan. 26, 2004) (Sprint Supplemental Response). Based on its own audit, Sprint returned \$1,245,779 for Dade-related E-rate FRNs, including \$341,363.26 relating to the instant matter.

¹¹ *Id.* at 2.

¹² See Administrator's Decision on Appeal at 3.

voluntarily returned related to the funding requests at issue.¹³ Sprint then filed the instant request for review with the Commission.¹⁴

6. In its request for review, Sprint argues that USAC's finding should be overturned for four reasons: (1) it is unreasonable to expect that equipment installed approximately six years prior to the appeal would still be on school premises; (2) there was no indication that any attempt was made to determine the disposition of the missing equipment; (3) USAC should not have relied on Dade's physical inventory as the basis for the reimbursement amounts in its COMAD letter because Sprint believes that the inventory was incorrect; (4) USAC's reimbursement calculations were incorrect because they were based on the equipment's total retail price rather than a price that excludes Dade's non-discounted portion and the volume and manufacturer's discounts that Sprint gave to Dade at the time of purchase;¹⁵ and (5) Sprint should not have to pay for 50 of the missing ASMs, because Sprint's records indicate that they installed 93 ASMs in 1999.¹⁶

7. Discussion. Based upon our review of the record, we deny Sprint's request for review. We find that Sprint received support from USAC for equipment that was not installed, and Sprint has not yet reimbursed USAC for all of the support Sprint received for this equipment. We therefore reject Sprint's arguments that USAC's findings should be reversed and find that Sprint should reimburse USAC an additional \$83,525.04 for the funds disbursed in violation of the Commission's rules.

8. First, the record demonstrates that Sprint received support for equipment that was never installed. The Commission's rules at the time required participants in the E-rate program to retain documentation regarding any equipment purchased with E-rate discounts.¹⁷ Dade provided physical inventory documentation to USAC for each of the 156 sites showing that a large number of items were not installed, including 617 out of the 624 funded ATAs and 143 out of the 624 funded ASMs.¹⁸ USAC properly relied upon Dade's physical inventory documentation as the basis for determining which equipment was in fact installed, rather than Sprint's after-the-fact internal audit. Sprint offered no explanation for why its internal audit results differed from Dade's records. We find Sprint's records to be less than reliable than Dade's records, given that Sprint previously submitted invoices to USAC for reimbursement relying upon proprietary installation documentation that, by its own admission, was inaccurate.¹⁹ We therefore find it reasonable and appropriate that USAC requested and relied upon documentation of Dade's complete inventory, in addition to its own site visits, in determining which equipment was installed in Dade's schools.²⁰

¹³ *Id.*

¹⁴ *See* Request for Review.

¹⁵ *See id.* at 2.

¹⁶ *Id.* at 4.

¹⁷ *See* 47 C.F.R. § 54.516 (1999) (requiring E-rate participants to maintain records of their E-rate transactions consistent with their procurement records for other purchases); 47 C.F.R. § 54.501(d)(3) (1999) (requiring service providers to retain records of rates charged to and discounts allowed for entities receiving supported services).

¹⁸ *See* COMAD Letter at 5-140.

¹⁹ *See* Administrator's Decision on Appeal at 1; Sprint Appeal at 2.

²⁰ USAC based the recovery amount on the number of ATAs and ASMs that were invoiced by Sprint, minus the number that were installed according to Dade's physical inventory. *See* Administrator's Decision on Appeal at 3.

9. We also find that Sprint's calculation of the refund due to USAC erroneously applied volume and manufacturer's discounts that would improperly reduce the amount of money USAC could recover from Sprint. The Commission's rules require USAC to recover funds disbursed to parties that obtained the funds in violation of the Commission's E-rate program rules.²¹ Based on the record before us, the funds USAC disbursed to Sprint did not include volume and manufacturer discounts and therefore, Sprint should not have deducted those discounted amounts from its reimbursement. It was proper for USAC to seek to recover the actual amount disbursed to Sprint for the services and equipment that were either never delivered and installed, or returned.²² We therefore direct USAC to continue its recovery action against Sprint.

10. 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 request for review filed by Sprint-Florida, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

Sprint reimbursed USAC based upon this information. *Id.* At the time Sprint made its voluntary reimbursement to USAC, it did not indicate that it questioned Dade's documentation. *See* Sprint Supplemental Response.

²¹ *See Commitment Adjustment Implementation Order*, 15 FCC Rcd at 22980, para. 11.

²² *See* COMAD Letter at 5-140.