

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Waiver and Review of	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Aberdeen School District 5	)	File Nos. SLD-582321, <i>et al.</i>
Aberdeen, WA, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: March 29, 2012**

**Released: March 29, 2012**

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

1. Consistent with precedent,<sup>1</sup> we deny three requests<sup>2</sup> and grant one request<sup>3</sup> from petitioners seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).<sup>4</sup> In three decisions, USAC determined that the applicants were not using the equipment for which funds were disbursed.<sup>5</sup> Based on our review of the record, we find that USAC correctly determined that the funds were improperly disbursed as the equipment in question was not being utilized in accordance with the E-rate program rules.<sup>6</sup> We thus affirm USAC’s decisions and direct USAC to continue recovery actions against those parties from which it is seeking recovery.

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<sup>1</sup> See *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, 26923, para. 26 (2003) (“*Schools and Libraries Third Report and Order*”) (“Recipients of support are expected to use all equipment purchased...for the specified purpose...for a reasonable period of time”); see also *Request for Review of the Decision of the Universal Service Administrator by Bootheel Consortium, Silver City, NM, et al.*, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-309634, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 8747 at 8749, para. 5 (2007) (*Bootheel Order*) (overturning USAC’s determination of ineligibility based on the Commission’s interpretation of D.C. law).

<sup>2</sup> See Appendix A. Friendship Public Charter Schools (Friendship) filed two separate requests on the same day with the Commission concerning the same application. See Appendices A and B. As described in this order, we deny Friendship’s request for review of USAC’s determination that funds were improperly disbursed as the equipment in question was not being utilized in accordance with the E-rate program rules, and grant Friendship’s request for review of USAC’s decision to reduce the school’s discount level because it determined that pre-kindergarten students were improperly included in the discount calculation.

<sup>3</sup> See Appendix B.

<sup>4</sup> 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. See 47 C.F.R. § 54.719(c).

<sup>5</sup> See Appendix A.

<sup>6</sup> See 47 C.F.R. § 54.504(b)(2)(v) and 47 C.F.R. § 54.504(c)(1)(vii); *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26923, para. 26.

2. Additionally, in the case of Friendship Public Charter Schools (Friendship), USAC reduced the discount level because it determined that pre-kindergarten students were improperly included in the discount calculation.<sup>7</sup> Based on our review of the record and state law, we grant this request. State law controls on the question of what constitutes “elementary and secondary education” for the purpose of E-rate funding. Friendship is based in the District of Columbia, and the District of Columbia Code establishes that elementary and secondary education includes pre-kindergarten students.<sup>8</sup> We thus remand the underlying application listed in Appendix B to USAC to revise the discount calculation consistent with this order. We direct USAC, in light of the foregoing, to take into consideration the revised discount calculation in its recovery action related to Friendship.

3. 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, 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), the requests for review filed by the petitioners listed in the Appendix A ARE DENIED.

4. 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), the request for review filed by the petitioner listed in the Appendix B IS GRANTED and the underlying application IS REMANDED to USAC for further consideration in accordance with the terms of this order.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>7</sup> See Appendix B. For the purposes of the universal service programs, Congress defined the term “elementary and secondary schools” as meaning “elementary and secondary schools as defined by the Elementary and Secondary Education Act of 1965.” 47 U.S.C. § 254 (h)(7)(A). The Elementary and Secondary Education Act’s definition of elementary and secondary schools, in turn, relies on the definitions for elementary and secondary education established by state law. See 20 U.S.C. §§ 7801(18), (38).

<sup>8</sup> See D.C. Code § 38-271.01(1C) (“Elementary and secondary education” means education from and including pre-k through the end of high school or their equivalent”).

**APPENDIX A****Appeals Denied**

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review Received</b>
Aberdeen School District 5 Aberdeen, WA	582321	2007	Dec. 6, 2010
Friendship Public Charter Schools * Washington, D.C.	573474	2007	Mar. 9, 2011
Maestro Computer and Cable Services, Inc. Oklahoma City, OK (Oklahoma City School District I-89 Oklahoma City, OK)	550189	2007	Mar. 29, 2011

**APPENDIX B****Appeal Granted**

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review Received</b>
Friendship Public Charter Schools * Washington, D.C.	573474	2007	Mar. 9, 2011

\* As indicated above, Friendship Public Charter Schools filed two separate requests on the same day with the Commission concerning the same application, as described in the accompanying order we grant one request and deny the other. *See supra* n.2.