

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of the Decisions of the
Universal Service Administrator by
Diversified Computer Solutions, Inc.
Columbia, South Carolina
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-224221
CC Docket No. 02-6

ORDER

Adopted: May 16, 2012

Released: May 16, 2012

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

1. Consistent with precedent, we grant a request from Diversified Computer Solutions, Inc., Columbia, South Carolina (Diversified) seeking review of a decision by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2001. We find that USAC should not have rejected an invoice for the purchase of a new switch on the basis that the service was not requested on Orangeburg's FCC Form 471.

2. Background. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts on eligible services. After an applicant for discounted services under the E-rate program has entered into agreements for eligible services with one or more service providers, it must file an FCC Form 471 with USAC. The completed FCC Form 471 notifies USAC of the services that have been ordered and supplies an estimate of funds requested for

1 Request for Review of the Decision of the Universal Service Administrator by Springfield Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-148247, CC Dockets No. 96-45, 97-21, Order, 16 FCC Rcd 5281 (Com. Car. Bur. 2001) (noting that maintenance services necessary to the operation of the internal connections network are eligible for E-rate discounts).

2 Letter from Tom Traywick, Diversified Computer Solutions, Inc., to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed Dec. 24, 2002) (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).

3 See 47 C.F.R. §§ 54.502, 54.503 (2001).

4 47 C.F.R. § 54.504(c) (2001); see also Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

eligible services.⁵ Item 21 of Block 5 of the FCC Form 471 instructs the applicant to attach “a description of the service, including a breakdown of the components and costs, plus any relevant brand names” for which the applicant is seeking funding.⁶ After reviewing the completed FCC Form 471, USAC issues a funding commitment decision letter indicating the funding, if any, the applicant is approved to receive.

3. On January 16, 2001, Orangeburg County School District 3 (Orangeburg) filed its FCC Form 471, requesting \$365,671 for a network maintenance services agreement provided on a time and materials basis by Diversified.⁷ USAC approved Orangeburg’s funding request on January 25, 2002.⁸ On August 23, 2002, Diversified replaced several 3Com Layer 2 switches with an Avaya Layer 3 network switch, and on September 11, 2002, Diversified submitted an invoice to USAC for the Avaya switch in the discounted amount of \$8,735.⁹ On October 22, 2002, USAC rejected the invoice on the basis that the service was not requested on Orangeburg’s FCC Form 471.¹⁰ In its request for review, Diversified argued that the phrase “fix or replace components” in its time and materials contract with Orangeburg authorized the replacement of network switches.¹¹

4. Discussion: We grant Diversified’s request for review. In the *Universal Service Order*, the Commission concluded “support should be available to fund discounts on basic installation and maintenance services necessary to the operation of the internal connections network.”¹² USAC’s eligibility list from funding year 2001 clearly states that “charges incurred for the maintenance . . . [of] Internal Connections . . . on a time and material basis are eligible for discount.”¹³ USAC’s 2001 eligibility list also states that the “Service Category used for labor should reflect the same service category of the product, or service being installed or maintained.”¹⁴ In accordance with this requirement,

⁵ See FCC Form 471.

⁶ See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471 Instructions) (this is the version of the FCC Form 471 that was in effect during the applicable time period).

⁷ Orangeburg County School District 3 FCC Form 471, Item 21 Attachment (filed Jan. 16, 2001) (Orangeburg FCC Form 471).

⁸ Letter from USAC to Daphne Walley, Orangeburg County School District 3, dated Jan. 25, 2002 (Orangeburg Funding Commitment Decision Letter).

⁹ Facsimile from Will Cauthen, Diversified Computer Solutions, Inc. to USAC, dated Sep. 11, 2002.

¹⁰ Request for Review at 10; USAC Disbursement Statement, dated Oct. 22, 2002.

¹¹ Request for Review at 2.

¹² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9021, para. 460 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000). *Universal Service Order*, 12 FCC Rcd at 9021, para. 460.

¹³ See Schools and Libraries Eligibility List (rel Dec. 29, 2000), located on the USAC web site, http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_122900.pdf, (2001 Eligibility List) at 38.

¹⁴ *Id.*

the description of the maintenance services included in Orangeburg's FCC Form 471 included the parenthetical "Network Maintenance" and the funding request was categorized as internal connections.¹⁵ Orangeburg also attached its contract with Diversified to the FCC Form 471 which contained the terms of the time and materials agreement, including a clause calling for Diversified to fix or replace components as needed.¹⁶ Based on our review of the record, we find that the replacement of the switch, which was eligible under the 2001 program rules,¹⁷ was within the scope of the contract and the approved funding request. Therefore, we grant Diversified's request. At this time, there is no evidence of waste, fraud or abuse in the record.

5. We therefore remand the underlying application to USAC for further action consistent with this order. To ensure that the underlying application is resolved expeditiously, we direct USAC to 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.

6. 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), that the request filed by Diversified Computer Solutions, Inc. on December 24, 2002 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 B. Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁵ See Orangeburg FCC Form 471 at Item 21.

¹⁶ *Id.* at Item 21 Attachment.

¹⁷ 2001 Eligibility List at 26.