

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Waiver and Review of
Decision of the
Universal Service Administrator by
Sprint Nextel Corporation
(Anaheim City School District,)
Anaheim, California)
Schools and Libraries Universal Service
Support Mechanism

File No. SLD-525962

CC Docket No. 02-6

ORDER

Adopted: May 23, 2012

Released: May 23, 2012

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

1. Consistent with precedent,1 we grant Sprint Nextel Corporation’s (Sprint’s)2 request on behalf of the Anaheim City School District (Anaheim City) seeking review of a decision 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).3 We find that Anaheim City sought mobile broadband service that was eligible for E-rate funding as Internet access in the applicable funding year. We deny, however, Sprint’s related request for a waiver allowing Anaheim City to correct its application and seek E-rate funding for Evolution Data Optimized (EVDO) connection cards as internal connections because we decline to find that connection cards for the mobile broadband service were eligible for funding.4

1 See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District 5, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-525618, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 2080 (Wireline Comp. Bur. Feb. 24, 2012) (determining that applicants sought support for service, products or maintenance that were eligible for E-rate funding based on the Eligible Services List);

2 See Appeal of Sprint Nextel Corporation (Anaheim City School District, Anaheim CA), to Federal Communications Commission, Application No. 525962, CC Docket Nos. 02-6 (filed Nov. 9, 2006) (Request for Review).

3 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).

4 End-user equipment is not eligible for E-rate funding and other equipment is not eligible if it is provided in or with end-user equipment. See, e.g., USAC website, Eligible Services List, Schools and Libraries Support Mechanism For Fund Year 2006, http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_041206.pdf, at 25-43 (last visited May 15, 2012) (2006 ESL) (listing eligible, conditionally eligible, and ineligible internal connections components).

2. Anaheim City sought E-rate program support for EVDO mobile broadband services and EVDO connection cards as Internet access in funding year 2006.⁵ USAC denied the request finding that Anaheim City sought support for services that were not eligible for E-rate funding.⁶ Sprint petitioned the Commission for review of USAC's decision to deny funding for the EVDO services and for a waiver permitting Anaheim City to correct its application to seek funding for the connection cards as internal connections.⁷ Sprint is correct that wireless Internet access designed for portable devices was eligible in funding year 2006 – provided that applicants allocate the costs of the requested services between on- and off-campus use of the service.⁸ Therefore, based on our review of the record, we find that Anaheim City's request for wireless Internet access service through EVDO service is eligible. We direct Anaheim City to provide USAC with an allocation of the costs, if any, associated with the off-campus use of the wireless Internet services.⁹ Once a cost allocation is determined, we direct USAC to reduce Anaheim City's funding request by the costs associated with the off-campus use of this service.

3. We next deny Sprint's request for waiver to allow Anaheim City to correct its application and seek E-rate funding for EVDO connection cards as internal connections.¹⁰ We find that Sprint has not demonstrated that the connection cards were eligible as internal connections nor that Anaheim City's request for the cards as Internet access was an administrative or clerical error.¹¹ Therefore, we deny Sprint's waiver request and direct USAC to reduce Anaheim City's funding request by the costs of all

⁵ See Anaheim City School District, FCC Form 470, dated Dec. 5, 2005; Anaheim City School District, FCC Form 471, dated Feb. 14, 2006. An EVDO connection card is a device used for mobile broadband. It is a way to access wireless Internet on a computer via the cell phone network rather than through a Wi-Fi connection. As with cell phones, users may have the choice between choosing a card for use on a pre-paid basis and getting a card tied to a service subscription. See Harry Newton, *Newton's Telecom Dictionary* at 348 (25th ed. 2009).

⁶ See Letter from Schools and Libraries Division, USAC, to Christina Halley, Sprint Spectrum, L.P., Funding Commitment Decision Letter, dated Sep. 19, 2006.

⁷ Request for Review at 1-2.

⁸ 2006 ESL, at 17, 23 (stating that wireless Internet access service designed for portable devices may be funded, provided that the applicant has in place an auditable system to allocate between eligible and ineligible uses is eligible under the Internet access category of the eligible services list).

⁹ Eligible users and locations are those that are involved with activities that are integral, immediate, and proximate to the education of students or the provision of library services to patrons. The presumption is that activities on school or library property meet this standard. *Id.* at 65-66. See also *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 17-19 (2003) (establishing a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons).

¹⁰ Request for Review at 2-3.

¹¹ End-user equipment is not eligible for E-rate funding and other equipment is not eligible if it is provided in or with end-user equipment. See, e.g., 2006 ESL at 25-43 (listing eligible, conditionally eligible, and ineligible internal connections components). See also *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Beth Rivka School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-63 1977, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 10653, 10662-10663, paras. 20-21 (Wireline Comp. Bur. 2010) (*Beth Rivka School Order*) (finding that applicants may not make substantive changes to the FCC Form 471 months after the application is submitted).

ineligible equipment, including the costs of the connection cards.

4. We also waive any Commission or USAC procedural deadlines, such as the invoicing deadline, that might be necessary to effectuate our ruling, given the length of time that has passed since the application was denied. We 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 date it receives Anaheim City's allocation of costs as specified in paragraph 2 above. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application. At this time, there is no evidence of waste, fraud or abuse in the record.

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, 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 for review filed by Sprint Nextel Corporation, IS GRANTED IN PART AND DENIED IN PART and the underlying application IS REMANDED to USAC for further consideration in accordance 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 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, that 54.500 *et seq.* of the Commission's rules, 47 C.F.R. § 54.500 *et seq.*, ARE WAIVED for the Anaheim City School District to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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