

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of a Decision of the)	
Universal Service Administrator by)	
)	
Kearney Public Schools)	File No. SLD-141485
Kearney, Nebraska)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: June 12, 2012

Released: June 12, 2012

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

1. Consistent with E-rate program (more formally known as the schools and libraries universal service support program) rules and procedures,¹ we grant a request for review filed by Kearney Public Schools (Kearney) of a commitment adjustment (COMAD) decision issued by the Universal Service Administrative Company (USAC) seeking to recover funds disbursed to Kearney for funding year 1999 under the E-rate program.²

2. In April 1999, Kearney applied for E-rate funding in the amount of \$99,536.20.³ Six months later, USAC issued an FCDL to Kearney committing to fund all of Kearney's funding requests.⁴ Kearney subsequently invoiced USAC in the amount of \$49,847.95.⁵

¹ In 2003, the Commission adopted the *Schools and Libraries Third Report and Order*, which codified USAC's existing procedures regarding service and equipment substitutions. *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, 26929, para. 42 (2003) (*Schools and Libraries Third Report and Order*). *See also* 47 C.F.R. § 54.504 (f); *See, e.g.*, Requests for Waiver of Decisions of the Universal Service Administrator by State of Louisiana Department of Education, *et al.*, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-412169, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 1664 (Wireline Comp. Bur. 2010) (granting three service substitution requests because the requests sought substitution for services or products with the same functionality in accordance with Commission rules).

² Letter from Margene Dahlstedt, Kearney Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 24, 2004) (Request for Review). Section 54.7199(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).

³ *See* FCC Form 471, Kearney Public Schools (dated Apr. 3, 1999) (regarding FCC Form 471 application number 141485); FCC Form 471, Kearney Public Schools (dated Apr. 5, 1999) (regarding FCC Form 471 application number 142338).

⁴ *See* Letter from USAC, Schools and Libraries Division, to Carol Shimeall, Kearney Public Schools (dated Oct. 5, 1999) (2nd FCDL).

⁵ *See* FCC Form 472, Kearney Public Schools (dated Aug. 8, 2000).

3. In 2003, USAC conducted an audit of Kearney and determined that Kearney had invoiced USAC for: (1) amounts in excess of the actual costs of the products it received; (2) products the school never actually purchased or installed at approved locations; and (3) services installed at an unapproved location.⁶ In light of its audit findings, on June 27, 2003, USAC sent a COMAD letter to Kearney seeking to recover \$17,446.15 in improperly disbursed funds.⁷ Kearney appealed USAC's COMAD letter.⁸ USAC denied Kearney's appeal on the basis that, pursuant to E-rate program rules, USAC is unable to disburse funds for services that were not purchased or delivered.⁹ Kearney then filed its Request for Review with the Commission requesting a partial review of USAC's decision.¹⁰ Kearney concedes USAC is entitled to recover some of the disbursed funds, but it seeks to reduce the recovery amount by \$7,391.70, the post-discount amount for seven switches Kearney purchased and installed.¹¹

4. Based upon our review of the record, we grant Kearney's request. Kearney applied for and received commitments from USAC for equipment and services, including seven switches.¹² The Commission's rules require applicants to seek bids on all requested eligible services and submit their funding requests to USAC for review, and Kearney properly sought funding from USAC for seven switches.¹³ Although the seven switches Kearney purchased were not the exact same switches that it had sought funding for, the procedures USAC had in place at the time (and the Commission's current rules)

⁶ See Letter from USAC, Schools and Libraries Division, to Carol Shimeall, Kearney Public Schools (dated Jun. 27, 2003) (COMAD Letter).

⁷ See COMAD Letter. In the *Commitment Adjustment Implementation Order*, the Commission established procedures to recover funds disbursed to parties that obtained the funds in violation of the Commission's E-rate program. 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 (2001) (*Commitment Adjustment Implementation Order*).

⁸ See Letter from Margene Dahlstedt, Kearney Public Schools, to USAC, Schools and Libraries Division (dated Aug. 18, 2003) (USAC Appeal). Kearney argued that: (1) it needed to purchase equipment to obtain Internet service prior to receiving its FCDL from USAC; (2) upon receipt of the FCDL, it determined it no longer needed additional equipment as originally requested because it already had the switches; and (3) USAC should reduce the recovery amount by \$7,391.70, the post-discount amount of just the seven switches purchased by Kearney.

⁹ See Administrator's Decision on Appeal at 2.

¹⁰ See Request for Review.

¹¹ *Id.*

¹² See FCC Form 471, Kearney Public Schools (dated Apr. 3, 1999) (regarding FCC Form 471 application number 141485), and 2nd FCDL.

¹³ The Commission's rules provide that entities must seek competitive bids for all services eligible for support. 47 C.F.R. §§ 54.503. An existing contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements. See 47 C.F.R. § 54.711(c). In accordance with the Commission's competitive bidding requirements, each applicant must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services. 47 C.F.R. § 54.503. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers. 47 C.F.R. § 54.503(c). See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008) (*Approach Learning Order*). Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services. See *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2000) (FCC Form 471); *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (November 2004) (current FCC Form 471).

allow applicants to substitute a service or product for one requested on its FCC Form 471 application.¹⁴ Kearney provided documentation to the Commission that indicates that the seven switches were purchased and installed during the funding year and were installed in eligible locations.¹⁵ Moreover, there is no evidence that Kearney violated E-rate program rules regarding the purchase and installation of the switches. We therefore affirm USAC's decision to recover the erroneously disbursed funds related to the equipment and services Kearney did not purchase. However, we agree with Kearney that the purchase of the seven switches prior to receipt of the FCDL is not a program violation. We thus find that Kearney is entitled to receive support for the post-discount amount of the equipment it actually purchased.¹⁶ We therefore reduce the COMAD recovery amount by \$7,391.70, and direct USAC to recover the remaining amount of \$10,054.45 in erroneously disbursed funds. Consistent with this order, we direct USAC to issue a revised COMAD letter to Kearney within 60 calendar days from the release date of this order.

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 Kearney Public Schools, Kearney, Nebraska, IS GRANTED 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 Kearney Public Schools 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

¹⁴ See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26929, para. 42; 47 C.F.R. § 54.504 (f).

¹⁵ See Letter from Gary Needham, Kearney Public Schools, to Office of the Secretary, Federal Communications Commission (filed Nov. 10, 2011). See FCC Form 470, Kearney Public Schools (dated Feb. 26, 1999).

¹⁶ See USAC Appeal at 2.