

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the
Universal Service Administrator by
Ed Tec Solutions, LLC
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-229919
CC Docket No. 02-6

ORDER

Adopted: January 22, 2013

Released: January 22, 2013

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

1. Consistent with precedent, we grant a request for review by Ed Tec Solutions, LLC (Ed Tec) of a decision issued by the Universal Service Administrative Company (USAC) seeking to recover funds disbursed to the Chimes School (Chimes) for funding year 2001 under the E-rate program (more formally known as the schools and libraries universal service program).

2. In funding year 2001, Chimes applied for E-rate funding for telecommunications services and internal connections, and USAC issued funding commitment decision letters to Chimes committing \$158,829.10 in E-rate support. Based on the submitted invoices, USAC reimbursed Chimes' funding

1 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) (codifying USAC's existing procedures regarding service and equipment substitutions); Requests for Waiver of Sections 54.504(c), 54.504(f), 54.507(c), and 54.507(g) of the Commission's rules 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 1653 (2010) (granting in part three requests for review by service providers that, in compliance with Commission rules, substituted services or products with services or products with the same functionality as those they indicated an intent to purchase on their FCC Forms 471); Request for Review of a Decision of the Universal Service Administrator by Kearney Public Schools, Schools and Libraries Universal Service Support Mechanism, File No. SLD-141485, CC Docket No. 02-6, Order, 27 FCC Rcd 6194, 6195-96, para. 4 (Wireline Comp. Bur. 2012) (granting request for review by service provider that substituted one type of router for another type of router with the same functionality, as allowed for by the USAC rules that governed service substitutions before the Commission issued the Schools and Libraries Third Report and Order).

2 See Letter from Eli Schwartz, Ed Tec Solutions, LLC, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 17, 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).

3 See FCC Form 471, The Chimes School (dated Jan. 15, 2001).

4 See Letter from USAC, Schools and Libraries Division, to Marty Lampner, The Chimes School (dated Mar. 15, 2002) (regarding Application Number 229919); Letter from USAC, Schools and Libraries Division, to Marty Lampner, The Chimes School (dated Mar. 15, 2002) (regarding Application Number 207994).

requests in the amount of \$114,360.93.⁵ Subsequently, USAC conducted an audit of Chimes and determined that Chimes committed two E-rate program violations for funding request number 533969: (1) Chimes received E-rate support for a backup domain and file server that was installed, but not configured or in use; and (2) Ed Tec improperly invoiced USAC for only one cabinet when the FCC Form 471 requested funding for two cabinets.⁶ In light of the audit findings, USAC sent a commitment adjustment (COMAD) letter to Ed Tec, the service provider for the equipment and services at issue, seeking to recover \$17,050.50 in improperly disbursed funds.⁷

3. Ed Tec appealed the recovery action to USAC.⁸ USAC denied Ed Tec's appeal.⁹ Ed Tec then filed the instant request for review with the Commission requesting a review of USAC's audit decision and its decision on appeal.¹⁰ Ed Tec disputes USAC's finding that the backup domain and file server was not properly configured and in use at Chimes.¹¹ In support of its argument, Ed Tec submitted a statement from Chimes asserting that the equipment was installed, configured and in use at the school.¹² With respect to the requested cabinets, Ed Tec argues that our rules allow applicants to substitute equivalent services and equipment and that Chimes replaced the two requested cabinets with a single cabinet that provides equal functionality at the same price as the originally requested cabinets and therefore USAC should not seek recovery.¹³

4. Based upon our review of the record,¹⁴ we grant Ed Tec's request. With respect to the backup domain and file server, notwithstanding USAC's finding to the contrary, we find that the evidence supports a determination that the backup domain and file server was installed, properly configured and working, through at least 2004. With respect to the cabinet substitution issue, although the cabinet

⁵ See Schools and Libraries Beneficiary Audit Report—The Chimes School, Audit No. SL2003BE021 (dated Sept. 15, 2003).

⁶ *Id.*

⁷ See Letter from USAC, Schools and Libraries Division, to Marty Lampner, Chimes School (dated Jun. 2, 2004) (COMAD Letter) at 5. In 2001, 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 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*). In that order, the Commission only authorized USAC to commence commitment adjustment recovery actions against the service provider. See *id.*

⁸ See Letter from Eli Schwartz, Ed Tec Solutions, LLC, to USAC, Schools and Libraries Division (dated Jun. 11, 2004). Ed Tec argued that: (1) the internal connections equipment was properly installed, configured and in use; and (2) USAC incorrectly determined that Ed Tec failed to purchase the requested equipment. *Id.* at 1-2. Ed Tec stated that the invoice submitted to USAC indicated that the school purchased one enhanced cabinet that provided the same functionality as the two cabinets that were originally requested on Chimes' funding year 2001 FCC Form 471 application.

⁹ See Letter from USAC, Schools and Libraries Division, to Eli Schwartz, Ed Tec Solutions, LLC (dated Dec. 16, 2004).

¹⁰ See Request for Review.

¹¹ *Id.* at 1.

¹² See Letter from Richard Gonsman, Director of Information Systems, Chimes, Inc., to Miriam Rubinson, Ed Tec Solutions, LLC (dated Jun. 4, 2004).

¹³ See Request for Review at 3.

¹⁴ The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723.

purchased by Chimes was not the equipment for which Chimes had sought funding, the procedures USAC had in place at the time allowed an applicant to substitute a comparable service or product for one requested on its FCC Form 471 application.¹⁵ Ed Tec provided documentation to the Commission demonstrating that the enhanced cabinet provides comparable functionality as the originally requested equipment for the same price.¹⁶ Moreover, there is no evidence that Chimes violated E-rate program rules regarding the purchase and installation of the cabinet. We therefore find that Chimes was entitled to receive support for the cabinet and direct USAC to discontinue the recovery action against Ed Tec.

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 Ed Tec Solutions, LLC, 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 DISCONTINUE its commitment adjustment action against Ed Tec Solutions, LLC.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁵ See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26929, para. 42.

¹⁶ See 47 C.F.R. § 54.504(f); Request for Review at Attach.