

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Waiver of the Decision of the
Universal Service Administrator by
South Carolina Division of the Chief Information
Officer, Columbia, South Carolina
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-441106
CC Docket 02-6

ORDER

Adopted: May 26, 2006

Released: May 26, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the South Carolina Division of the Chief Information Officer's (South Carolina CIO) appeal of a decision by the Universal Service Administrative Company (USAC) denying South Carolina CIO funding from the schools and libraries universal service support mechanism because USAC determined that South Carolina CIO failed to provide evidence of authority to represent its consortium members. We remand the appeal to USAC for action consistent with this Order, and, to ensure that it is resolved expeditiously, we direct USAC to issue a decision no later than 60 days from release of this Order.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, also known as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connection services. In accordance with the Commission's rules, an applicant must file with USAC, for posting to USAC's website, an FCC Form 470 requesting discounted services. After an applicant has entered into

1 South Carolina Division of the Chief Information Officer Request for Review of the Decision of the Universal Service Administrator of FCC Form 471 and/or in the Alternative, Petition for Waiver, File No. SLD-441106, CC Docket No. 02-6 (filed Feb. 24, 2006) (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 the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 47 C.F.R. §§ 54.501-54.503.

3 The applicant must wait 28 days before entering into an agreement with a service provider for the requested services. 47 C.F.R. § 54.504(b). See also Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Funding Years 2000, 2001, 2002 FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (April 2002) (Funding Year 2003 FCC Form 470); Schools and Libraries Universal Service, Description (continued...)

agreements for eligible services with one or more service providers, it must file an FCC Form 471 with USAC.⁴

3. The FCC Form 471 must be signed by the person authorized to order telecommunications and other supported services for the consortium.⁵ By signing the FCC Form 471, the applicant is certifying that it is authorized to submit and certify to the accuracy of the application on behalf of all consortium members.⁶ A consortium application may only be submitted on behalf of schools and libraries which have actually authorized the consortium to make the request.⁷ In *Project Interconnect*, we affirmed USAC's requirement that an applicant applying as a consortium must submit a letter of agency (LOA) from each of its members expressly authorizing the applicant to submit an application on its behalf.⁸ Specifically, we found that this requirement is consistent with USAC's authority to implement administrative procedures that ensure compliance with the Commission's rules and requirements as established in the *Eighth Reconsideration Order*.⁹ In lieu of an LOA, according to USAC's guidelines, "[c]onsortia which have a statutory or regulatory basis and for which participation by schools or libraries

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of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (Funding Year 2004 FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (Funding Year 2005 FCC Form 470) (collectively, FCC Form 470).

⁴ The FCC Form 471 notifies USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services. 47 C.F.R. § 54.504(c). See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1997) (Funding Year 1999 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Funding Year 2000 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Funding Year 2001 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (Funding Year 2002 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) (Funding Year 2004 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (Funding Year 2005 FCC Form 471) (collectively, FCC Form 471).

⁵ 47 C.F.R. § 54.504(c)(1).

⁶ *Id.* See also <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (retrieved April 19, 2006); FCC Form 471, Item 33, Block 6.

⁷ 47 C.F.R. § 54.504(c)(1).

⁸ *Request for Review of the Decision of the Universal Service Administrator by Project Interconnect, Brooklyn Park, Minnesota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File Nos. SLD-146858, 146854, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 13655, 13658, para. 8 (Common Car. Bur. 2001) (*Project Interconnect*). USAC requires an LOA to contain the following five elements: the name of the person filing the application; the name of the person authorizing the filing of the application; the specific time frame the LOA covers; the signature, date, and title of an official who is an employee of the entity who is authorizing the filing of the application; and the type of services covered by the LOA. <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (retrieved April 19, 2006). In certain situations, other documentation, such as evidence that each consortium member knew it was represented on the application, may be accepted as proof of authorization. *Id.*

⁹ See 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96-45, 13 FCC Rcd 25058, 25075-76, paras. 30-31, 34 (1998) (*Eighth Reconsideration Order*).

is mandatory” may provide copies of the relevant state statute or regulation.”¹⁰ In Funding Year 2005, USAC began requiring applicants to obtain signed LOAs from each consortium member prior to the certification date of their FCC Form 471.¹¹

4. South Carolina CIO, in conjunction with the South Carolina Department of Education, created a state telecommunications network (STN), which provides internet access to 45,000 classrooms and 198 libraries in the state of South Carolina.¹² The South Carolina Department of Education conveyed authority to South Carolina CIO to provide telecommunications services to all public school districts and to file E-Rate applications on behalf of each public school district.¹³ South Carolina CIO has applied for annual E-Rate support since the inception of the E-rate program.¹⁴ On February 10, 2005, South Carolina CIO timely filed its FCC Form 471 application seeking Funding Year 2005 support for telecommunications and Internet services, amounting to approximately \$16.2 million, on behalf of the State of South Carolina to provide connectivity for its public schools and libraries connected to the STN.¹⁵ Subsequently, during USAC’s Program Integrity Assurance (PIA) review, USAC requested from South Carolina CIO copies of its LOAs.¹⁶ Because USAC already had South Carolina CIO’s LOAs for Funding Year 2004 on file, South Carolina CIO assumed USAC was requesting new LOAs and had its consortium members sign new LOAs for Funding Year 2005.¹⁷

5. On August 3, 2005, USAC denied South Carolina’s funding request in its entirety explaining that the “[c]onsortium leader failed to provide evidence of authority to file forms 471 on behalf of, or evidence of the membership of, a substantial number of members included in this consortium.”¹⁸ On September 2, 2005, South Carolina filed a request for review with USAC in response to USAC’s denial of its Funding Year 2005 application.¹⁹ On December 28, 2005, USAC denied South Carolina CIO’s request for review, finding that South Carolina CIO did not produce LOAs that were signed by

¹⁰ See <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (retrieved April 19, 2006).

¹¹ See <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (retrieved April 19, 2006). The LOA instructions were updated on USAC’s website on January 10, 2005, and a revised sample of an LOA was made available on February 1, 2005. See FCC Form 471, Item 33, Block 6 (content was last modified on January 10, 2005); February 2005 Announcements, Sample Letter of Agency (LOA) available (2/1/05), at <http://www.universalservice.org/sl/tools/news-archive/2005/022005.asp#020105a> (retrieved April 19, 2006).

¹² Request for Review at 1, 9, and Exhibit G (H.3716, Part 1B, Sect. 72.37, General Appropriations Bill, Fiscal Year 2005-2006, 116th Sess. (S.C. 2005)). See also H.4925, Part 1B, Sect. 72.37, General Appropriations Bill, Fiscal Year 2004-2005, 115th Sess. (S.C. 2004) and H.3749, Part 1B, Sect. 72.48, General Appropriations Bill, Fiscal Year 2003-2004, 114th Sess. (S.C. 2003).

¹³ See Request for Review, Exhibit H (Letters from the South Carolina State Superintendent of Education).

¹⁴ See Request for Review at 2.

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 8. The PIA review process examines applicants’ FCC Forms 471 and other documentation to ensure that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. During this process, USAC may ask for additional documentation to support the statements made on the application. See USAC website, Program Integrity Assurance (PIA), <http://www.sl.universalservice.org/reference/6pia.asp> (retrieved April 17, 2006).

¹⁷ Request for Review at 8.

¹⁸ Universal Service Administrative Company, Schools and Libraries Division, Funding Commitment Decision Letter, South Carolina Chief Information Officer, dated August 3, 2005.

¹⁹ Letter from Kyle Herron, South Carolina Division of the Chief Information Officer, to Schools and Libraries Division, Universal Service Administrative Company, dated September 2, 2005 (Letter of Appeal).

each consortium member before its FCC Form 471 was certified.²⁰ On February 24, 2006, South Carolina CIO filed the instant Request for Review.²¹

6. In its Request for Review, South Carolina CIO argues that it had established its authority to file an E-Rate application on behalf of its member schools and libraries.²² South Carolina CIO asserts that USAC's rule change in Funding Year 2005 requiring LOAs to be signed prior to the certification date of FCC Form 471 did not provide South Carolina CIO with an adequate amount of time to receive newly signed LOAs from all of its consortium members for its Funding Year 2005 application.²³ Specifically, South Carolina CIO notes that USAC had on record all of the LOAs from its Funding Year 2004 application, and that the relationship between it and its members had not changed.²⁴ The CIO further asserts that it should be exempt from the LOA requirements as it possesses continuing authority, under South Carolina law, to submit an FCC Form 471 on behalf of all consortium members.²⁵

7. In the alternative, South Carolina requests a waiver USAC's LOA requirements.²⁶ South Carolina CIO asserts that it has shown that the Superintendent of Education and State Librarian have authorized South Carolina CIO to seek E-rate support on behalf of all public schools and libraries connected to the STN in South Carolina.²⁷ South Carolina CIO further contends that it complied with the LOA requirements in previous funding years but was unable to comply with the new requirements for Funding Year 2005 because they were not published by USAC in time to allow for full compliance.²⁸ Thus, South Carolina CIO argues that a waiver is in the public interest to enable the public schools and libraries connected to the STN to receive the support necessary in the State of Carolina to enable the operation of the STN.²⁹

III. DISCUSSION

8. Based on the record before us, we grant South Carolina CIO's appeal of the decision by USAC denying South Carolina CIO funding from the E-rate program. USAC did not provide sufficient notice for consortia applicants to comply with the new policy in Funding Year 2005. As noted above, USAC did not post its revised LOA requirements for Funding Year 2005 until approximately halfway through the filing window period.³⁰ For instance, had a consortium filed its FCC Form 471 between

²⁰ Universal Service Administrative Company, Schools and Libraries Division, Administrator's Decision on Appeal, December 28, 2005.

²¹ Request for Review at 12.

²² *Id.* at 3.

²³ *Id.* at 7-8. *See supra* n.11. The Funding Year 2005 filing window opened on December 14, 2004, and closed on February 17, 2005, approximately one month after USAC posted its LOA instructions on USAC's website. *See* November 2004 Announcements, Funding Year 2005 Form 471 Filing Window Established (11/05/04), at <http://www.universalservice.org/sl/tools/news-archive/2004/112004.asp> (retrieved April 19, 2006).

²⁴ Request for Review at 5-6.

²⁵ *Id.* at 8-9; *see* Exhibits G (H.3716, Part 1B, Sect. 72.37, General Appropriations Bill, Fiscal Year 2005-2006, 116th Sess. (S.C. 2005), H (Letters from the South Carolina State Superintendent of Education), and I (Letter from the South Carolina Director of the State Library).

²⁶ Request for Review at 11-12.

²⁷ *Id.* at 11.

²⁸ *Id.*; *see supra* n.23.

²⁹ Request for Review at 11-12.

³⁰ *See supra* n.11; November 2004 Announcements, Funding Year 2005 Form 471 Filing Window Established (11/05/04), at <http://www.universalservice.org/sl/tools/news-archive/2004/112004.asp> (retrieved April 19, 2006).

December 14, 2004, when the window opened, and January 10, 2005, when USAC updated the LOA instructions on its website, it would have been impossible for that consortium to comply with USAC's new policy, even though its application may have been valid in all other respects.³¹ We therefore find that USAC should not have denied South Carolina CIO's application for failure to comply with the new USAC procedure for Funding Year 2005.

9. Furthermore, USAC's stated policy is that "[c]onsortia which have a statutory or regulatory basis and for which participation by schools or libraries is mandatory must be able to provide documentation supporting this certification, including copies of the relevant state statute or regulation."³² South Carolina CIO has provided evidence on appeal to the Commission demonstrating that it has statutory authority to apply on behalf of the members of its consortium. When South Carolina CIO was unable to produce valid LOAs to demonstrate its authority to file its FCC Form 471, USAC should have specified why it was asking for proof of authority.³³ Had USAC inquired further, or told South Carolina CIO that it was attempting to confirm its authority to apply on behalf of its consortium members, South Carolina CIO could have offered to USAC the evidence it has provided on appeal proving its statutory authority to apply for funding on behalf of its consortium members.³⁴ Thus, we find that South Carolina CIO had the authority to apply for funding on behalf of the members of the consortium.

10. Moreover, we find granting South Carolina CIO's appeal will serve the public interest. South Carolina CIO's application for support statewide involves millions of dollars that severely affects the connectivity of all of South Carolina's public schools and libraries connected to the STN.³⁵ We find that denying South Carolina's request for funding would create undue hardship for South Carolina's schools and libraries. We also note that there is no evidence in the record at this time of waste, fraud, abuse, misuse of funds, or a failure to adhere to core program requirements. Accordingly, we grant South Carolina CIO's appeal and remand this appeal to USAC for further processing consistent with our decision. To ensure that the underlying applications are processed expeditiously, we direct USAC to issue a decision on the application no later than 60 days from the release of this Order.

11. We note, however, the limited nature of this decision. To ensure that discounts are only given to "bona fide request[s]" for services by schools and libraries, a consortium application may only be submitted on behalf of schools and libraries that have actually authorized the consortium to make the request on their behalf.³⁶ Thus, although we grant South Carolina CIO's appeal, our action here does not eliminate USAC's current requirement that an applicant applying for funding on behalf of a consortium have signed LOAs in place prior to submitting an FCC Form 471 or demonstrate its authority through

³¹ See *supra* n.23. South Carolina CIO has applied and has been approved for E-Rate funding every year since the inception of the E-rate program. Request for Review at 2. The circumstances and relationship of South Carolina CIO to its consortium members in Funding Year 2005 had not changed since the submission of its Funding Year 2004 application. *Id.* at 6. South Carolina CIO had submitted to USAC LOAs for all of its members for Funding Year 2004, and all of its members in Funding Year 2005 were the same. *Id.* at 5-6.

³² See <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (retrieved April 19, 2006).

³³ See *Request for Review of the Decision of the Universal Service Administrator by Fayette County School District, Fayetteville, West Virginia*, SLD No. 338605, CC Docket No. 02-6, Order, 20 FCC Rcd 12880, 12882, para. 4 (Wireline Comp. Bur. 2005).

³⁴ See *Request for Review*, Exhibits G (South Carolina Appropriations Law, 2005-2006 Bill H. 3716 for FY 2005-2006), H (Letters from the South Carolina State Superintendent of Education), and I (Letter from the South Carolina Director of the State Library).

³⁵ Request for Review at 1.

³⁶ See 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. § 54.504(c)(1).

alternative means, such as state statute or regulation.³⁷ We continue to require E-rate applicants to submit complete and timely information to USAC as part of the application review process.

12. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate universal service mechanism are used for appropriate purposes. Although we grant the appeal addressed here, we reserve the right to conduct audits and investigations to determine compliance with the program rules and requirements. Because audits and investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were disbursed in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the E-rate mechanism and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred and whether recovery is warranted.

III. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED that, 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 South Carolina Division of the Chief Information Officer Request for Review of the Decision of the Universal Service Administrator and/or in the Alternative, Petition for Waiver IS GRANTED.

14. IT IS FURTHER ORDERED that, 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 South Carolina Division of the Chief Information Officer Request for Review of the Decision of the Universal Service Administrator and/or in the Alternative, Petition for Waiver IS REMANDED to the Administrator for further consideration in accordance with the terms of this Order.

³⁷ See *supra* para. 3; <http://www.universalservice.org/sl/tools/reference/letters-of-agency.aspx> (retrieved April 19, 2006).

15. IT IS FURTHER ORDERED that, 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, USAC SHALL COMPLETE its review of the South Carolina Division of the Chief Information Officer Request for Review of the Decision of the Universal Service Administrator and/or in the Alternative, Petition for Waiver and issue an award or a denial based on a complete review and analysis no later than 60 days from release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau