

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

In the Matter of)	
)	
Request for Review of the Decision of the Universal Service Administrator by)	
)	
Hickory Public Schools)	File Nos. SLD-426895, 427079, 428994,
Hickory, North Carolina)	428773, 429033, 429150
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6

ORDER

Adopted: June 20, 2007

Released: June 20, 2007

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, we grant the Request for Review filed by Hickory Public Schools seeking review of a decision by the Universal Service Administrative Company (USAC) denying Hickory Public Schools discounted services for Funding Year 2004 under the schools and libraries universal service support mechanism (E-rate program).¹ For the reasons set forth below, we grant Hickory Public School's Request for Review and remand it to USAC for appropriate action consistent with this Order. We also direct USAC to complete its review of this application and issue an award or denial based on a complete review and analysis no later than 90 calendar days from the release of this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections services.² Following application review, USAC issues one or more funding commitment decision letters (FCDLs) to both the applicant and the service provider.³ The FCDL notifies applicants and service providers that the request has been funded, has not been funded, or is "As Yet Unfunded," indicating that USAC is uncertain the requested internal connections will be funded.⁴ If a request for internal connections is not yet funded, program participants would receive one or more subsequent letters detailing USAC's final funding decision.⁵ Once an applicant has received funding approval in the FCDL, the applicant submits an FCC Form 486 to indicate that service has begun, specify the service start date and demonstrate that the applicant has received approval of its

¹ Letter from Jeff Tice, Hickory Public Schools, to Federal Communications Commission, filed June 9, 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. §§ 54.502, 54.503.

³ See USAC website, Step 9: Receiving Your Funding Commitment, <http://www.universalservice.org/sl/applicants/step09> (retrieved May 29, 2007).

⁴ See, e.g., Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Catawba Valley High School, dated December 3, 2004 (FCDL for File No. SLD-427079) at 3.

⁵ See, e.g., Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Catawba Valley High School, dated January 11, 2005 (FCDL for File No. SLD-427079) at 3.

technology plans.⁶ An applicant must also comply with section 54.507(d) of the Commission's rules which requires the implementation of non-recurring services by September 30 following the close of the applicable funding year.⁷ If a service provider is unable to complete implementation for reasons beyond the service provider's control, an applicant may request an extension of the implementation deadline for non-recurring services.⁸

3. In Funding Year 2004, Hickory Public Schools sought E-rate program funding for six internal connections funding requests from two service providers.⁹ On December 3, 2004, USAC mailed FCDLs notifying Hickory Public Schools that the requests for the six Funding Request Numbers (FRNs) were "As Yet Unfunded."¹⁰ On January 11, 2005, USAC sent another round of FCDLs, this time notifying Hickory Public Schools that its requests for funding were granted.¹¹ In its Request for Review, Hickory Public Schools noted that while it received the December FCDLs, it did not receive the January FCDLs that would have notified the school that it received funding.¹² On October 17, 2005, Hickory Public Schools said it learned that the six FRNs from Funding Year 2004 were funded when searching for USAC's Funding Year 2005 funding decisions.¹³ On October 20, 2005, Hickory Public Schools filed FCC Forms 486 for the six

⁶ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (August 2003) at 2 (2003 FCC Form 486 Instructions).

⁷ 47 C.F.R. § 54.507(d).

⁸ 47 C.F.R. § 54.507(d)(3). Extensions of the implementation deadline for non-recurring services may also be granted for: (1) applicants whose FCDLs are issued by USAC on or after March 1 of the funding year for which discounts are authorized; (2) applicants who received service provider change authorizations or service substitution authorizations from USAC on or after March 1 of the funding year for which discounts are authorized; or (3) applicants whose service providers are unwilling to complete installation because funding disbursements are delayed while USAC investigates the application for program compliance. *See* 47 C.F.R. § 54.507(d)(1)-(2), (4).

⁹ Funding request numbers 1190046, 1189897 and 1190248 were for internal connections from Dimensions Data. Funding request numbers 1182166, 1189003 and 1189091 were for internal connections from Gateway.

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Catawba Valley High School, dated December 3, 2004 (FCDL for File No. SLD-427079); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Catawba Valley High School, dated December 3, 2004 (FCDL for File No. SLD-429033); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Longview Elementary School, dated December 3, 2004 (FCDL for File No. SLD-426895); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Longview Elementary School, dated December 3, 2004 (FCDL for File No. SLD-428994); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Southwest Elementary School, dated December 3, 2004 (FCDL for File No. SLD-428773); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Southwest Elementary School, dated December 3, 2004 (FCDL for File No. SLD-429150) (collectively, December FCDLs).

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Catawba Valley High School, dated January 11, 2005 (FCDL for File No. SLD-427079); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Catawba Valley High School, dated January 11, 2005 (FCDL for File No. SLD-429033); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Longview Elementary School, dated January 11, 2005 (FCDL for File No. SLD-426895); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Longview Elementary School, dated January 11, 2005 (FCDL for File No. SLD-428994); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Southwest Elementary School, dated January 11, 2005 (FCDL for File No. SLD-428773); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Southwest Elementary School, dated January 11, 2005 (FCDL for File No. SLD-429150) (collectively, January FCDLs).

¹² Request for Review at 4.

¹³ *Id.* at 5.

funding requests.¹⁴ Hickory Public Schools also filed a service delivery deadline extension request since the approved services were implemented after September 30 following the close of the 2004 Funding Year.¹⁵ On January 4, 2006, USAC denied Hickory Public Schools' request because Hickory Public Schools "did not provide information that satisfied" an extension of the deadline.¹⁶ Hickory Public Schools then filed an appeal of USAC's decision.¹⁷

4. In its appeal to USAC, Hickory Public Schools argued that it never received the FCDLs that would have notified the school district that its funding commitments were approved before the implementation deadline had passed.¹⁸ In support of its argument, Hickory Public Schools attached letters from its two service providers who also claimed they did not receive the FCDLs.¹⁹ USAC denied Hickory Public Schools' appeal, noting that the FCDLs were sent to Hickory Public Schools at the address supplied by the applicant and were not returned to USAC as undeliverable.²⁰ Further, USAC noted, Hickory Public Schools had received the December FCDLs, mailed a month before the January FCDLs.²¹ On June 9, 2006, Hickory Public Schools filed a request for review with the Commission.²²

5. Upon review of the record, we grant Hickory Public Schools' Request for Review. The Commission's rules expressly permit applicants to receive extensions of the September 30 deadline in cases where the "service provider is unable to complete implementation for reasons beyond the service provider's control."²³ In this case, Hickory Public Schools was unable to complete installation by September 30, 2005, because neither it nor its service providers were made aware that Hickory's requests for funding were fulfilled. Although the Commission has held that, absent a showing to the contrary, an item mailed is presumed to be received by the addressee,²⁴ Hickory Public Schools has provided sufficient evidence to rebut

¹⁴ FCC Form 486, Catawba Valley High School, dated October 20, 2005 (FCC Form 486 for File No. SLD-427079); FCC Form 486, Catawba Valley High School, dated October 20, 2005 (FCC Form 486 for File No. SLD-429033); FCC Form 486, Longview Elementary School, dated October 20, 2005 (FCC Form 486 for File No. SLD-426895); FCC Form 486, Longview Elementary School, dated October 20, 2005 (FCC Form 486 for File No. SLD-428994); FCC Form 486, Southwest Elementary School, dated October 20, 2005 (FCC Form 486 for File No. SLD-428773); FCC Form 486, Southwest Elementary School, dated October 20, 2005 (FCC Form 486 for File No. SLD-429150) (collectively, Hickory Public Schools FCC Forms 486).

¹⁵ Letter from Jeff Tice, Hickory Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated November 8, 2005 (Hickory Invoice Deadline Extension Request).

¹⁶ See, e.g., Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Hickory Public Schools, dated January 4, 2006 (Administrator's Decision on Implementation Extension Request).

¹⁷ Letter from Jeff Tice, Hickory Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated February 22, 2006 (Request for Appeal).

¹⁸ Request for Appeal at 4.

¹⁹ Request for Appeal at 4, Attachments.

²⁰ See, e.g., Appeal Digest for Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Tice, Hickory Public Schools, dated April 19, 2006 (Administrator's Decision on Invoice Implementation Extension Appeal).

²¹ *Id.*

²² Request for Review.

²³ 47 C.F.R. 54.507(d)(3).

²⁴ See *Request for Waiver by Port Angeles School District 121, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-233361 and SLD-237708, CC Dockets No. 96-45 and 97-21, Order, 18 FCC Rcd 301, 304, para. 7 (Wireline Comp. Bur. 2003); *Request for Special Relief by Midwest Video Corp.*, Memorandum Opinion and Order, 43 FCC 2d 262, 263, para. 3 (1973).

this presumption. We find that the evidence in the record supports Hickory Public Schools' claim that it did not receive the January FCDLs, notably the fact that both of the service providers for the six FRNs also did not receive the letters. We also note that Hickory Public Schools immediately filed its FCC Forms 486 and extension requests after discovering that its funding commitments were funded. We believe Hickory Public Schools would have similarly followed through with the E-rate program application process had it received the FCDLs in January 2006. Finally, while the Commission's competitive bidding rules are a central tenet of the E-rate program, and a tool for preventing waste, fraud, and abuse, the record contains no evidence at this time that Hickory Public Schools engaged in activity intended to defraud or abuse the E-rate program. Accordingly, we grant Hickory Public Schools' Request for Review and remand the underlying application to USAC for further review consistent with this Order. We direct USAC to complete its review of this application and issue an award or denial based on a complete review and analysis no later than 90 calendar days from the release 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 pursuant to authority delegated under 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 Hickory Public Schools, Hickory, North Carolina, on June 9, 2006 IS GRANTED, and the application IS REMANDED to USAC for further consideration consistent with this Order.

7. 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 COMPLETE its review of these applications and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order.

8. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon
Deputy Chief
Wireline Competition Bureau