

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

In the Matter of)	
)	
Request for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Loving Municipal Schools)	File No. SLD-416043
Loving, New Mexico)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: July 27, 2011

Released: July 27, 2011

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

I. INTRODUCTION

1. In this order, we deny a request for review filed by Loving Municipal Schools (Loving) seeking review of a decision by the Universal Service Administrative Company (USAC) denying its funding requests for one of its schools under the E-rate program (more formally known as the schools and libraries universal service program) for funding year 2004 on the ground that the requested discount level was not supported by sufficient documentation.¹ For the reasons discussed below, we affirm USAC's decision and deny Loving's request for review.

II. BACKGROUND

2. E-rate Program Rules and Procedures. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.² The level of discount, which ranges from 20 percent to 90 percent, is determined primarily by the level of economic disadvantage, with some schools and libraries located in rural areas receiving an additional discount of up to 10 percent.³ The level of poverty for schools and school districts is measured by the percentage of student enrollment that is eligible for a free or reduced price lunch under

¹ See Letter from David Chavez, Dawn Biagiante, and John Ortiz, Loving Municipal Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed July 11, 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 the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). Loving also filed an identical appeal of the decision with USAC. See Letter from David Chavez, Dawn Biagiante, and John Ortiz, Loving Municipal Schools, to USAC, Schools and Libraries Division (dated July 7, 2005) (Appeal to USAC).

² See 47 C.F.R. §§ 54.501-54.503, 54.505(b)(3); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9040-44, paras. 501-07 (1997) (*1997 Universal Service Order*) (*subsequent history omitted*).

³ See 47 C.F.R. § 54.505.

the National School Lunch Program (NSLP) or a federally approved alternative mechanism, such as a survey.⁴ On the FCC Form 471 application, applicants are required to provide information that establishes their appropriate discount rate.⁵ The Commission's rules require USAC to apply a school's site-specific discount level for funding requests for services that are specific to a particular site.⁶ Where the services are to be shared among eligible schools or libraries, the Commission's rules require USAC to apply the shared discount percentage to funding requests for those shared services.⁷ The shared discount percentage is the weighted average of the applicable discounts of all the schools or libraries sharing a portion of the services, with the weighting based on the number of students in each school.⁸

3. The Commission's rules also provide that requests for telecommunications and Internet access services shall receive first priority for available funds and that requests for internal connections and basic maintenance of internal connections shall receive second priority.⁹ The rules further provide that, when sufficient funds are not available to fund all requests for discounts for priority two services (internal connections and basic maintenance of internal connections), USAC shall allocate funds for discounts beginning with those applicants eligible for a 90 percent level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., 89 percent, 88 percent, and so on, until the available funds are exhausted.¹⁰

4. Request for Review. In January 2004, Loving applied for discounted telecommunications services and internal connections for three schools — Loving Municipal High School, Loving Municipal Middle School, and Loving Municipal Elementary School — for funding year 2004.¹¹ On its FCC Form 471 application, Loving indicated that it was eligible for discounted services at the 85 percent discount level.¹² Loving submitted documentation that supported a 90 percent discount rate for Loving Municipal High School and Loving Municipal Middle School, and an 80 percent discount rate for Loving Municipal Elementary School.¹³ In May 2005, USAC issued a funding commitment decision letter (FCDL) to Loving granting its funding requests for telecommunications services and internal connections for the high school and middle school, but denying its funding requests (funding request numbers (FRNs) 1143816 and 1144222) for internal connections for the elementary school.¹⁴ In denying

⁴ 47 C.F.R. § 54.505(b)(1).

⁵ Block 4 of the FCC Form 471 application asks the school to provide information regarding the school's status as rural or urban, the number of students enrolled in the school, and the number of students eligible for the National School Lunch Program (NSLP). *See* Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

⁶ *See* 47 C.F.R. § 54.505(b)(1).

⁷ *See* 47 C.F.R. § 54.505(b)(4).

⁸ *Id.*

⁹ *See* 47 C.F.R. § 54.507(g)(1).

¹⁰ *Id.*

¹¹ *See* FCC Form 471, Loving Municipal Schools (filed Jan. 30, 2004) (Loving FCC Form 471).

¹² *Id.*

¹³ *See* Letter from USAC, Schools and Libraries Division, to John Ortiz, Loving Municipal Schools at 1-2 (dated Aug. 30, 2005) (Administrator's Decision on Appeal).

its request for the elementary school, USAC applied the site-specific discount rate of 80 percent for the funding requests rather than the shared discount rate of 85 percent.¹⁵ Because priority two services in funding year 2004 were not funded below the 81 percent discount level, USAC's reduction in its discount rate amounted to a denial of funding for these requests.¹⁶

5. On July 7, 2005, Loving appealed USAC's decision to USAC stating that FRNs 1143816 and 1144222 qualified for E-rate funding for internal connections at the shared 85 percent discount level, instead of the 80 percent discount level applied by USAC.¹⁷ On July 11, 2005, Loving also submitted an identical appeal with the Commission of USAC's decision stating that USAC's determination was incorrect and that USAC disregarded Loving Municipal Schools' 85 percent shared discount level.¹⁸ In August 2005, USAC denied Loving's appeal to USAC on the grounds that the funding requests were for internal connections at the elementary school only; thus, the E-rate rules required USAC to apply the site-specific discount to these funding requests.¹⁹ In this order, we address Loving's appeal to the Commission.

III. DISCUSSION

6. Based upon our review of the record, we affirm USAC's decision and deny Loving's request for review. As indicated above, the Commission's rules require USAC to apply a school's site-specific discount level for funding requests for services that are specific to a particular site.²⁰ Where, however, the services are to be shared among eligible schools or libraries, the Commission's rules require USAC to apply the shared discount percentage to funding requests for those shared services.²¹ In this instance, the documentation provided by Loving indicates that FRNs 1143816 and 1144222 were only for internal connections at the elementary school and not to be shared with the high school and middle school.²² Therefore, USAC correctly applied the site-specific discount of 80 percent to Loving Elementary School's funding requests.²³ Because funding for internal connections in funding year 2004 was not available to applicants that qualified for a discount rate below 81 percent, Loving was unable to

¹⁴ See Letter from USAC, Schools and Libraries Division, to John Ortiz, Loving Municipal Schools (dated May 10, 2005) (Funding Commitment Decision Letter (FCDL)).

¹⁵ See FCDL at 5; Administrator's Decision on Appeal at 1-2.

¹⁶ Funding for priority two services in funding year 2004 was capped at the 81 percent discount level. See USAC website, Schools and Libraries Division, Schools and Libraries News Brief, <http://www.usac.org/sl/tools/news-archive/2005/04202005.asp#042905> (last visited July 26, 2011).

¹⁷ See Appeal to USAC.

¹⁸ See Request for Review at 1; *supra* n.1.

¹⁹ See Administrator's Decision on Appeal at 1-2.

²⁰ See *supra* para. 2.

²¹ *Id.*

²² See Loving FCC Form 471. Loving also submitted the service provider's proposal which indicates that FRNs 1143816 and 1144222 were for internal connections at the Loving Elementary School. See Request for Review.

²³ See Administrator's Decision on Appeal at 1.

receive funding for internal connections for FRNs 1143816 and 1144222.²⁴ Accordingly, we affirm USAC's decision and deny Loving's request for review.

IV. ORDERING CLAUSES

7. 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 Loving Municipal Schools, Loving, New Mexico, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
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²⁴ See *supra* n.16.