

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the
Universal Service Administrator by
Illinois State Board of Education
Chicago, Illinois
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-266018
CC Docket No. 02-6

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant the request for review filed by the Illinois State Board of Education (Illinois BOE) appealing a decision by the Universal Service Administrative Company (USAC) that denied funding under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2001. We find that the Illinois BOE was exercising a voluntary renewal option in its contract during funding year 2001 and, therefore, was operating under a valid contract. We therefore grant the request for review and remand the underlying application to USAC for processing consistent with this order. To ensure that the underlying matter is resolved expeditiously, we direct USAC to complete its review of the underlying application and to issue an award or a denial based upon a complete review and analysis no later than 90 calendar days from the release date of this order.

II. BACKGROUND

2. Under 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 connections. The Commission's rules provide that an eligible school, library, or consortium must seek competitive bids for all services eligible for support. Thus, an applicant must post a FCC Form 470 on USAC's website requesting discounts for E-rate eligible services, including tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is

1 See Request for Review by Illinois State Board of Education (filed Mar. 10, 2004) (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).

2 47 C.F.R. §§ 54.501-54.503.

3 47 C.F.R. § 54.504. There is one limited exception for existing, binding contracts signed on or before July 10, 1997. See 47 C.F.R. § 54.511(c). The Illinois BOE does not argue that this exemption applies to its case.

seeking a new contract.⁴ The applicant must wait at least 28 days after the FCC Form 470 is posted to the USAC website, or after public availability of an applicant's RFP, whichever is later, before making commitments with the selected service provider for the requested services.⁵ Once the school or library has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, the applicant must submit a FCC Form 471 application before USAC will issue a funding commitment.⁶ An applicant can enter into multi-year contracts or contracts with voluntary extensions without reposting a FCC Form 470 application and complying with the 28-day rule each year as long as the applicant indicated such intent in the original posting in Item 13 on its FCC Form 470 or in its RFP.⁷ Applicants are also required to comply with state and local procurement procedures in addition to following the Commission's competitive bidding requirements.⁸

3. Under program rules, applicants may purchase eligible services from "master contracts" negotiated by an appropriate third party such as a state governmental entity.⁹ Applicants must indicate on their FCC Form 471 if the duration of the state master contract does not coincide with the funding year.¹⁰ If a state master contract will expire during the funding year and the new service provider has not been chosen when the applicant files its FCC Form 471, the applicant must indicate on its FCC Form 471 that there will be a replacement master contract.¹¹ Specifically, the applicant must fill out two Block 5 funding requests for each funding request affected by an expiring master contract: one covering the expiring master contract, and one covering the replacement master contract.¹² Each Block 5 funding request covering the replacement master contract must contain certain information, including a "dummy" Service Provider Identification Number (SPIN) provided by USAC for the service provider that has not yet been selected for the replacement master contract.¹³ Each service provider has its own SPIN.¹⁴ When

⁴ 47 C.F.R. § 54.504(b); *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b)(4); *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

⁶ 47 C.F.R. § 54.504(c); *see also* FCC Form 471.

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10-12 (1999); *see* USAC website, contract guidance, at <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx> (last visited June 4, 2010). A contract including voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract. *Id.*

⁸ 47 C.F.R. § 54.504(a).

⁹ *See* 47 C.F.R. § 54.500(g) (defining a "master contract" as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider).

¹⁰ *See* USAC website, State Replacement Contracts, <http://www.universalservice.org/sl/applicants/step04/state-replacement-contracts.aspx> (last visited June 4, 2010). The E-Rate funding year runs from July 1 of the funding year to June 30 of the following year.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *See* USAC website, Obtain a Service Provider Identification Number, <http://www.universalservice.org/sl/providers/step01/> (last visited June 4, 2010).

the state is ready to begin the competitive bidding process for the replacement master contract, it must file another FCC Form 470.¹⁵ Once a replacement master contract has been signed, the applicant must request a SPIN change to change from the “dummy” SPIN to the SPIN of the new service provider to complete the process.¹⁶

4. The Illinois BOE Request for Review. For funding year 2001, the Illinois BOE timely filed a FCC Form 471 using a state master contract.¹⁷ The master contract was set to expire on December 31, 2001, but allowed the state to continue any services covered by it for up to a year on a tariffed, month-to-month basis.¹⁸ On its FCC Form 471, the Illinois BOE included two Block Five funding requests for each service: one for the portion of the year covered by the state master contract, and another for the rest of the funding year.¹⁹ On June 8, 2001, the Illinois BOE filed a FCC Form 470 requesting bids for a replacement master contract.²⁰ Ultimately, Illinois was unable to renew the state master contract before the end of funding year 2001.²¹ Instead, it exercised the provision in its existing contract that allowed it to continue to receive services on a tariffed, month-to-month basis.²²

5. On March 20, 2002, USAC denied funding for the second half of funding year 2001.²³ USAC stated that the FCC Form 470 intended to cover the second half of the funding year was submitted after the close of the funding year 2001 window, and also after the Illinois BOE’s FCC Form 471.²⁴ The Illinois BOE filed an appeal with USAC on July 11, 2003, asserting that the state master contract allowed it to continue with the services at issue “under existing rates and/or tariffed services.”²⁵ After USAC denied the appeal, the Illinois BOE filed the instant request for review with the Commission.²⁶ In its request for review, the Illinois BOE asserts that USAC erred in denying funding because the state master

¹⁵ USAC website, State Replacement Contracts, <http://www.universalservice.org/sl/applicants/step04/state-replacement-contracts.aspx> (last visited June 4, 2010).

¹⁶ *Id.*

¹⁷ FCC Form 471, Illinois State Board of Education, certified January 19, 2001 (Illinois BOE FCC Form 471).

¹⁸ *See* Request for Review at Attachment A (Contract).

¹⁹ *Id.* The Illinois BOE claims that it contacted USAC a number of times to ensure that it was filing correctly. *See* Request for Review at 2.

²⁰ Illinois BOE FCC Form 471. Applicants had to post a FCC Form 470 by January 18, 2001 to file a FCC Form 471 within the filing window. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ricardo Tostado, Illinois State Board of Education (dated Jan. 12, 2004) (Administrator’s Decision on Appeal).

²¹ Request for Review at 4.

²² *Id.*

²³ *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ricardo Tostado, Illinois State Board of Education (dated Mar. 20, 2002) (Administrator’s Funding Decision).

²⁴ Administrator’s Decision on Appeal.

²⁵ Letter from Ricardo Tostado, Illinois State Board of Education, to Schools and Libraries Division, Universal Service Administrative Company at 3 (dated Jul. 11, 2003) (Request for Appeal).

²⁶ Administrator’s Decision on Appeal; Request for Review.

contract was in place when the Illinois BOE signed its FCC Form 471 and continued as a valid contract for the entire funding year.²⁷

III. DISCUSSION

6. We grant the Illinois BOE's request for review. In its denial of the Illinois BOE's appeal, USAC treats the services at issue as tariffed services obtained after the expiration of the state master contract and, as a result, concludes that the FCC Form 470 for these services was not timely posted.²⁸ We find, however, that Illinois exercised the voluntary renewal option of its contract such that a valid contract with the same rates was in place for the entirety of funding year 2001.²⁹ Thus, the FCC Form 470 that the Illinois BOE filed on June 8, 2001 was not necessary and should not have been used as a basis for denial of funding. Accordingly, we grant the Illinois BOE's request for review and remand its appeal to USAC for further processing consistent with our decision.³⁰

7. To ensure that the underlying matter is resolved expeditiously, we direct USAC to complete its review of the Illinois BOE's application and issue an award or denial based upon a complete review and analysis no later than 90 days from the release date of this order.³¹ In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.³² We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where USAC has evidence that this standard has not been met.

8. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the request addressed here, the Commission reserves the right to conduct audits or investigations to determine compliance with the E-rate program rules or 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

²⁷ Request for Review at 1-2.

²⁸ See Administrator's Decision on Appeal at 2.

²⁹ See Request for Review at 4 ("[T]he existing arrangement remained in place – there were no increases in rates or curtailment of services."); see also *Request for Review by Paterson School District, Paterson, New Jersey, Federal-State Joint Board on Universal Service*, File No. SLD-397016, CC Docket No. 02-6, Order, 21 FCC Rcd 13101 (Wireline Comp. Bur. 2006) (finding a valid contract in place for the entire funding year where a state master contract was extended after the applicant had already filed its FCC Form 471).

³⁰ We estimate that the request for review granted in this order involves an application for approximately \$2.5 million in funding for funding year 2001. We note that USAC has already reserved sufficient funds to address the outstanding appeals. Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2010* (Apr. 30, 2010). We thus determine that the action we take today should have minimal impact on the universal service fund as a whole.

³¹ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with all grounds for denial.

³² Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, the Commission will require USAC to recover such funds through its normal process. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

9. IT IS THEREFORE 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. §§ 151-54 and 254, and pursuant to authority delegated in 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 Illinois State Board of Education, Chicago, Illinois, IS GRANTED and the application IS REMANDED to USAC for further consideration in accordance with the terms of this order.

10. 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. §§ 151-54 and 254, and pursuant to authority delegated in 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), USAC SHALL COMPLETE its review of the remanded application and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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