

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the Decision of the
Universal Service Administrator by
Anson County School District
Wadesboro, North Carolina
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-477011, 477301
CC Docket No. 02-6

ORDER

Adopted: June 13, 2006

Released: June 13, 2006

By the Chief, Wireline Competition Bureau:

1. In this Order we grant the Request for Review filed by Anson County School District (Anson County) seeking review of a decision by the Universal Service Administrative Company (USAC) denying Anson County discounted services under the schools and libraries universal service support mechanism (E-rate program).1 USAC found that Anson County had not budgeted the funds necessary to pay its share of the price of the eligible discounted services it sought.2 For the reasons discussed below, we grant the request for review and remand this case to USAC for further consideration 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 60 days from release of this Order.

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 connection services.3 To ensure that applicants are able to use the discounted services effectively, and thereby minimize waste, Commission rules require applicants to certify that they will have the necessary resources to finance both the non-discounted portion of the price of eligible services and whatever their technology plans indicate they need, in terms of equipment, training, and anything else, to be able to effectively use the discounted services.4 That is, applicants must ascertain the costs of the products and services they need to support effective usage and then certify that they have identified funding sources that will enable them to purchase those products and services and the non-discounted portion of the price of eligible services.5 Support for eligible services is conditional upon the applicant securing access to all of the

1 Letter from Maxter E. Allen, Anson County School District, to Federal Communications Commission, filed March 28, 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 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Maxter E. Allen, Anson County School District, dated February 10, 2006 (re: Funding Request Number 1317636) (USAC Decision on Appeal).

3 47 C.F.R. §§ 54.501-503.

4 See 47 C.F.R. § 54.508(a)(3), (4).

5 See 47 C.F.R. § 54.504(b)(2)(vi), (c)(1)(iii); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471), item 25; Federal-State Joint Board on

resources, including computers, training, software, maintenance, and electrical connections necessary to effectively use the services purchased.<sup>6</sup>

3. On February 16, 2005, Anson County filed nine applications seeking E-rate discounts on \$1,928,868.81 in services.<sup>7</sup> During a program integrity assurance (PIA) review by USAC of that submission, in the spring of 2005, Anson County provided USAC with a proposed 2005-2006 Uniform Budget for Anson County Schools, which was approved by the Anson County Board of Education on April 25, 2005.<sup>8</sup> In a subsequent selective review of those applications, which began in August 2005, USAC sought to confirm that Anson County had secured the funds necessary to pay its share of the price of those services (the discounted price), which USAC calculated to be \$331,183.02.<sup>9</sup> Anson County's September response to USAC stated that it was canceling three of its funding applications,<sup>10</sup> and those three, combined with a fourth, which it had cancelled earlier,<sup>11</sup> reduced the amount for which it sought E-rate discounts to \$339,028.27 and reduced the amount that Anson County itself would have to pay to \$57,634.80. In October 2005, Anson County gave USAC a memo summarizing its revenues and expenditures for services sought through the E-rate program because the budget that Anson County had submitted to USAC in the spring of 2005 did not provide sufficient detail to determine which expenditures were designated for E-rate eligible services or which revenues were designated for payment of Anson County's share of those services. The memo showed that Anson County had allocated \$110,288.85 to pay its share of E-rate service charges,<sup>12</sup> more than enough to finance its reduced request. USAC, denied Anson County's remaining applications, including the two at issue here, based on Anson County's failure to demonstrate that it had secured all of the necessary funding for all of its funding applications, including those it cancelled in September, when it made its certifications to this effect in the FCC Form 471 applications it submitted in February 2005.<sup>13</sup>

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*Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 577 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, 13 FCC Rcd 24493 (1997), *affirmed in part, reversed in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

<sup>6</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15830-31, paras. 65-66 (2004).

<sup>7</sup> See Anson County's FCC Form 471 applications 474321, 476080, 476305, 476542, 477011, 477301, 477476, 479711, and 479864.

<sup>8</sup> The 2005-2006 Uniform Budget that Anson County submitted showed revenues and expenditures of \$33,174,146.

<sup>9</sup> USAC Decision on Appeal at 2.

<sup>10</sup> See Note from Maxter Allen to Mr. Arauz, undated (included in Anson County's September 19, 2005 selective review response to USAC) (canceling Anson County's "connectivity requests," which were FCC Form 471 applications 474321, 476080, and 476305).

<sup>11</sup> Anson County cancelled FCC Form 471 application 476542 sometime between April 8, 2005 and July 20, 2005. See Letter from George Truman, Anson County Schools, to Michael Knight, Schools and Libraries Division, Universal Service Administrative Company, dated April 8, 2005; Schools and Libraries Service Program, Services Ordered and Certification Form 471, Application Status Display, Entity Number 126969, Funding Year 2005, [http://www.sl.universalservice.org/FY3\\_form471/471StatusCheck\\_Display.asp](http://www.sl.universalservice.org/FY3_form471/471StatusCheck_Display.asp) (2/1/2006) (indicating that a funding commitment letter for FCC Form 471 application 476542 was issued July 20, 2005).

<sup>12</sup> See Memo from Maxter Allen and George Truman, Anson County Schools, to Al Arauz, dated October 10, 2005.

<sup>13</sup> USAC Decision on Appeal at 2. USAC also denied Anson County's FCC Form 471 applications 479711 and 479864. Letters from Schools and Libraries Division, Universal Service Administrative Company, to Maxter E. Allen, Anson County School District, dated December 27, 2006 (concerning FCC Form 471 applications 479711 and 479864). USAC only granted FCC Form 471 application 477476 for \$7,968 in support for basic telecommunications services.

4. As we have previously held, if an applicant had a good faith, reasonable basis at the time the application was filed for stating that it had secured the necessary funds, but that events subsequent to the filing have now rendered it unable to pay for all of its funding requests, SLD should provide the applicant with the opportunity to select a subset of its funding requests that its current funds can cover.<sup>14</sup> Although the summary of E-rate revenues and expenditures that Anson County submitted to USAC in October 2005 did not account for how Anson County would have financed the four funding requests that it cancelled, the current record is unclear about whether Anson County's April 2005 proposed 2005-2006 Uniform Budget included sufficient funds to finance all nine of Anson County's original funding requests. Anson County indicates that this budget included a "local appropriation to cover the match for internet connectivity." Although that appropriation is not reflected in Anson County's fall 2005 summary of E-rate financing, that may be because, by the fall, it appeared that the revenues would not be forthcoming. The existence in January 2006 of \$160,000 in additional funds certainly suggests that Anson County likely expected, in good faith, that it would have sufficient funds available back in February 2005. Unfortunately, the record does not indicate whether USAC and Anson County sufficiently resolved any uncertainties between them with regard to whether Anson County had sufficient financing.

5. Therefore, we grant Anson County's appeal and remand these applications to USAC to work with Anson County to determine whether the April 2005 tentative budget it submitted to USAC and any other relevant supplementary materials indicate that Anson County would have been able to cover the entire \$331,183.02 that Anson County would have owed, assuming that that all of the revenues that Anson County had reasonably anticipated had come through and no additional, unbudgeted priority expenditures had arisen. If USAC finds that Anson County would have been able to finance that entire amount, and if its application is otherwise consistent with program rules, then USAC should grant the two funding requests at issue here.

6. ACCORDINGLY, IT IS ORDERED, 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 Anson County School District on March 28, 2006 IS GRANTED and REMANDED to USAC for further consideration consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau

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*See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Maxter E. Allen, Anson County School District, dated December 27, 2006 (concerning FCC Form 471 application 477476).

<sup>14</sup> *See Request for Review by Beginning with Children Charter School and Yeshiva Karlin-Stolin, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-256153, SLD-265665, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 936, 940 para. 9 (Wireline Comp. Bur. 2003).