

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the
Universal Service Administrator by
Integrity Communications, Ltd.
Corpus Christi, TX
Schools and Libraries Universal Service
Support Mechanism
CC Docket No. 02-6

ORDER

Adopted: August 28, 2009

Released: August 28, 2009

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address Integrity Communications, Ltd.'s (Integrity) request for review of a letter issued by the Universal Service Administrative Company (USAC) under the schools and libraries universal service support mechanism, also known as the E-rate program.

II. BACKGROUND

A. E-Rate Rules

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.

1 See Request for Expedited Review by Integrity Communications, Ltd., CC Docket No. 02-6 (filed Dec. 26, 2007) (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 See Letter from Schools and Libraries Division, Audit Response, USAC, to Stewart Burleigh, Integrity (dated Oct. 24, 2007) (Audit Letter).

3 47 C.F.R. §§ 54.501-54.503.

rural areas receiving an additional discount of up to 10 percent.<sup>4</sup> An eligible school or library must pay the non-discount portion of services or products purchased with E-rate discounts.<sup>5</sup>

3. The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support.<sup>6</sup> Accordingly, an applicant must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services for which the applicant is seeking a new contract.<sup>7</sup> The applicant must describe the desired services on its FCC Form 470 or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services.<sup>8</sup> After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.<sup>9</sup>

4. After the eligible services have been delivered, the applicant determines which payment method to use to secure reimbursement from USAC for the services rendered under the E-rate program.<sup>10</sup> If the applicant pays the full cost of the services, then the applicant must submit an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) form, to secure reimbursement from USAC.<sup>11</sup> If the applicant pays only the reduced cost of the services, then the service provider must file an FCC Form 474, Service Provider Invoice (SPI) form, to receive its reimbursement.<sup>12</sup> Based on information provided on the FCC Form 472 or the FCC Form 474, USAC remits the E-rate support payments to the service provider.<sup>13</sup> Prior to remitting support in some cases, USAC may ask the service provider to have the applicant certify that the services covered in the submitted invoice were delivered and installed.<sup>14</sup> In the

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<sup>4</sup> See 47 C.F.R. § 54.505.

<sup>5</sup> 47 C.F.R. § 54.523.

<sup>6</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>7</sup> 47 C.F.R. § 54.504(b).

<sup>8</sup> See 47 C.F.R. § 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (Oct. 2004) (FCC Form 470).

<sup>9</sup> 47 C.F.R. § 54.504(b)(4).

<sup>10</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9217-19, paras. 44-50 (2003) (*Schools and Libraries Second Report and Order*); see also USAC website, Form 472 BEAR Filing Guidance, <http://www.sl.universalservice.org/reference/8bear.asp> (last visited Aug. 28, 2009); USAC website, Invoice Filing Information USAC, <http://www.universalservice.org/sl/applicants/step11> (last visited Aug. 28, 2009). Beginning July 1, 2004, the Commission's rules require the service provider to allow the applicant to select the payment method governing the payment for services rendered in accordance with the E-rate program. See 47 C.F.R. §54.514 (b).

<sup>11</sup> FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, available at [http://www.universalservice.org/\\_res/documents/sl/pdf/472.pdf](http://www.universalservice.org/_res/documents/sl/pdf/472.pdf) (last visited Aug. 28, 2009).

<sup>12</sup> FCC Form 474, Service Provider Invoice (SPI) Form, available at [http://www.universalservice.org/\\_res/documents/sl/pdf/474.pdf](http://www.universalservice.org/_res/documents/sl/pdf/474.pdf) (last visited Aug. 28, 2009).

<sup>13</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 17 FCC Rcd 1914, 1919, para. 9 (2002); see also *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9217, para. 42.

<sup>14</sup> See USAC website, <http://www.usac.org/sl/providers/step09/payment-process-and-status.aspx> (last visited Aug. 28, 2009).

*Schools and Libraries Fifth Report and Order*, the Commission stated that “failure to pay more than 90 days after completion of service...presumptively violates our rule that the Beneficiary must pay its share.”<sup>15</sup> The Commission stated that “[a]llowing schools and libraries to delay for an extended time their payment for services would subvert the intent of our rules that the beneficiary must pay, at a minimum, ten percent of the cost of supported services.”<sup>16</sup>

5. In general, the applicant must use the funded services within the E-rate funding year,<sup>17</sup> except that the Commission’s rules give applicants three additional months (until September 30 following the close of the funding year) to install one-time services known as non-recurring services.<sup>18</sup> In addition, an applicant may request an extension of this deadline if certain criteria are met.<sup>19</sup>

6. According to Commission mandate, USAC is required to take action to prevent waste, fraud, and abuse in the E-rate program.<sup>20</sup> In the *Schools and Libraries Fifth Report and Order*, the Commission directed USAC to submit to the Commission for review a list summarizing all current USAC administrative procedures, including “those procedures that serve to protect against waste, fraud, and abuse.”<sup>21</sup> In accordance with such directions, USAC files a list of its administrative procedures each year, including a description of each procedure, the rules each procedure furthers, and how each procedure furthers program integrity.<sup>22</sup> As directed, USAC’s filing contains procedures to protect against waste, fraud, and abuse, including a procedure for dealing with applicants and service providers who are determined to be non-compliant with Commission rules after undergoing an audit.<sup>23</sup>

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<sup>15</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15816, para. 24 (2004) (*Schools and Libraries Fifth Report and Order*).

<sup>16</sup> *Id.*

<sup>17</sup> The E-rate funding year starts on July 1 and ends on June 30 of the next calendar year. 47 C.F.R. § 54.507(b).

<sup>18</sup> 47 C.F.R. § 54.507(d); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512, para. 7 (2001) (*Permanent Extension Order*).

<sup>19</sup> 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

<sup>20</sup> *See, e.g.*, 47 C.F.R. § 54.702(g) (requiring USAC to file annually information regarding “administrative action intended to prevent waste, fraud, and abuse”); *Federal-State Joint Board on Universal Service, Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002*, CC Docket No. 02-6, Order, 18 FCC Rcd 25417, 25422, para. 15 (2003) (stating that, to guard against waste, fraud, and abuse, it is reasonable for USAC generally to defer action on applications upon receiving evidence of potential program violations); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 9202, 9224, para. 65 (2003) (discussing generally USAC’s authority to combat waste, fraud, and abuse); *Request for Review of a Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, SLD No. 105791, Order, 15 FCC Rcd. 423, 428, para. 9 (2000) (discussing the Commission’s mandate that USAC take steps to prevent waste, fraud, and abuse in the E-rate program).

<sup>21</sup> *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15835, para. 80; 47 C.F.R. § 54.702(g).

<sup>22</sup> *See, e.g.*, Universal Service Administrative Company, Schools and Libraries Division, Administrative Procedures (filed Oct. 31, 2008) (USAC Administrative Procedures).

<sup>23</sup> USAC Administrative Procedures at 54.

## B. Request for Review

7. At issue in this appeal is USAC's suspension of funding for Integrity based on audit findings for Integrity's provision of internal connections service to San Benito Independent School District (San Benito) for funding year 2002. To solicit bids from service providers for those services, San Benito posted an FCC Form 470 and RFP in December 2001.<sup>24</sup> One of the terms of the RFP was that "[n]o progress or advance payments [would]...be made" and payment would be remitted at the completion of the entire project.<sup>25</sup> Subsequently, San Benito and Integrity entered into a legally binding agreement that incorporated the payment terms of the RFP.<sup>26</sup> The service delivery dates and contract dates were extended several times, causing the project completion date to be moved to September 30, 2006.<sup>27</sup> Between June 23, 2004, and August 10, 2005, Integrity submitted five "progress invoices" to San Benito for payment.<sup>28</sup> Each progress invoice stated that payment was "due on receipt."<sup>29</sup> Consistent with the terms of the contract, San Benito did not make payments to Integrity for any of the progress invoices.<sup>30</sup> Between June 22, 2004, and August 10, 2005, Integrity submitted FCC Forms 474 to USAC requesting payment for the five invoices.<sup>31</sup> For each FCC Form 474, San Benito completed a service certification form stating that the services described in Integrity's invoice were delivered and installed.<sup>32</sup> In two instances, San Benito's service certification forms stated that the applicant intended to pay its non-discounted share on November 15, 2005, and November 30, 2005, respectively.<sup>33</sup> On November 20, 2006, when Integrity issued the "final invoice" to San Benito, San Benito paid the entire non-discounted portion owed to Integrity in one check on December 4, 2006.<sup>34</sup>

8. On November 29, 2006, on behalf of USAC, KPMG LLP (KPMG) initiated an E-rate compliance audit of San Benito for funding year 2002.<sup>35</sup> On December 11, 2006, San Benito informed Integrity of the audit and requested assistance in responding to some of the audit questions.<sup>36</sup> Integrity provided the information to San Benito but was otherwise not involved in the KPMG examination.<sup>37</sup>

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<sup>24</sup> Request for Review at 5.

<sup>25</sup> See Request for Review at Attachment, Request for Competitive Sealed Proposals at 11 (RFP).

<sup>26</sup> Request for Review at 5.

<sup>27</sup> See *id.* at 7-9.

<sup>28</sup> See *id.* at 7-8.

<sup>29</sup> See, e.g., Integrity Invoice No. 881726-062304 (dated Jun. 23, 2004).

<sup>30</sup> See, e.g., Request for Review at 17 (stating that "Integrity was not paid by SBISD [San Benito] until December 4, 2006, after all of the contemplated work was completed").

<sup>31</sup> See *id.* at 7-8.

<sup>32</sup> See *id.*

<sup>33</sup> See San Benito Service Certifications dated August 18, 2005, and October 18, 2005.

<sup>34</sup> See Request for Review at 9.

<sup>35</sup> See *id.* at 9.

<sup>36</sup> See *id.* at 10.

<sup>37</sup> See *id.* at 10.

9. On January 19, 2007, KPMG issued its Independent Accountant's Report, concluding that San Benito was not compliant with E-rate program rules regarding the payment of its non-discounted share of the price of the services.<sup>38</sup> The Audit Report stated that San Benito did not pay the five progress invoices when they were issued, but instead paid one check for the full amount on December 4, 2006, after receiving the final invoice.<sup>39</sup> The Audit Report concluded that this was a violation of the Commission's *Schools and Libraries Fifth Report and Order*, which stated that "failure to pay more than 90 days after completion of service...presumptively violates our rule that the Beneficiary must pay its share."<sup>40</sup> In response, among other things, San Benito stated that Integrity had billed San Benito in violation of the agreement that there would be no advance or progress payments to the service provider and that San Benito had reminded Integrity of this in writing.<sup>41</sup> In its Management Response to the Audit Report, USAC stated:

Since the Beneficiary stated in the RFP that there would be no advance or progress payments, they were not required to pay their non-discounted portion until completion of the project. USAC does agree, however, that the service provider should not have billed USAC for the progress payments if their contract with the applicant did not allow for such payments...USAC will not seek recovery from the applicant. However, USAC will take appropriate steps to ensure that in the future the service provider does not prematurely invoice USAC.<sup>42</sup>

10. On October 24, 2007, USAC sent a letter to Integrity stating that a beneficiary audit had revealed that Integrity was not in compliance with Commission rules because it had prematurely billed USAC for services and equipment.<sup>43</sup> Specifically, USAC stated that Integrity had billed the beneficiary and USAC prior to completion of the project, thereby violating the terms of the RFP, which stated that there would be no advance payments to the service provider before completion of the project.<sup>44</sup> In addition, USAC stated that Integrity's actions "indicate that you failed to comply with one or more of the certifications that you made on program forms and/or that your entity has otherwise failed to comply with program requirements."<sup>45</sup> USAC required Integrity to file within six months a plan to ensure that, when it filed for future reimbursements from USAC, Integrity would have provided the services or equipment to the applicant, and that Integrity's receipt of any progress or advance payments was included in the relevant contract between Integrity and the applicant.<sup>46</sup> USAC informed Integrity that USAC would take no action on funding requests involving Integrity until it reviewed Integrity's plan and determined that it

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<sup>38</sup> See *id.* at Attachment, KPMG Independent Accountant's Report at 1 (Audit Report).

<sup>39</sup> See Audit Report at 4.

<sup>40</sup> See *id.* at 4, citing *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15816, para. 24.

<sup>41</sup> See Audit Report at 5.

<sup>42</sup> See Universal Service Administrative Company, Management Response to Improper Payment Information Act Audit of the Schools and Libraries Program at San Benito Consolidated Independent School District (dated July 30, 2007).

<sup>43</sup> See Audit Letter at 2.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.* at 1.

<sup>46</sup> *Id.* at 1.

adequately addressed the non-compliance issue.<sup>47</sup> USAC also stated that a copy of the Audit Letter would be sent to all applicants with pending E-rate funding commitments involving Integrity, so that such applicants “may make informed decisions about how to proceed...”<sup>48</sup> On November 21, 2007, Integrity filed a letter stating that the Audit Letter was incorrect in finding that Integrity had engaged in premature billing and that, therefore, there was “no basis for requiring Integrity to put in place any plan...”<sup>49</sup> On December 26, 2007, Integrity filed the instant appeal with the Commission, arguing that USAC had no authority to take action based on the Audit Report and that Integrity had not violated the Commission’s rules.<sup>50</sup> On April 10, 2009, Integrity submitted a compliance plan to the Commission describing its invoicing procedures.<sup>51</sup>

11. Shortly before USAC sent the Audit Letter to Integrity, the Texas Education Agency released a report alleging that the Donna School District in Texas had violated state purchasing laws when it awarded a \$6.6 million contract to Integrity without opening the bidding to outside bidders.<sup>52</sup> In September 2007, the Donna School District interim superintendent stated that the Department of Justice and the Federal Communications Commission were conducting an investigation of the Donna School District.<sup>53</sup> According to news reports, the suspended superintendent at Donna School District who entered into the contract with Integrity had previously been at the San Benito school district in 2003, when Integrity had a \$2.1 million contract to install a new digital phone system.<sup>54</sup> As a general matter, USAC will suspend funding when it is aware of a criminal or civil investigation of a service provider.<sup>55</sup>

### III. DISCUSSION

12. We find that Integrity’s actions were inconsistent with the E-rate rules and that USAC, based on information in the Audit Report, appropriately required the filing of a compliance plan to assure USAC that Integrity had established sufficient internal controls to avoid repeating the violation in the future. We further conclude that an overall suspension of disbursements and funding commitments relating to Integrity was appropriate in light of the Department of Justice and Commission investigation of Integrity that was known to USAC at the time. Thus, we deny Integrity’s request for review.

13. First, we find that USAC had authority to find that Integrity violated the E-rate rules based on KPMG’s audit of San Benito, the beneficiary. Integrity argues that the Audit Report cannot be used to penalize Integrity because its subject was San Benito, not Integrity, and that therefore “USAC

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<sup>47</sup> *Id.* at 2-3.

<sup>48</sup> *Id.* at 2.

<sup>49</sup> Letter from Cynthia B. Schultz and Paul C. Besozzi, Counsel to Integrity, to Brian Murphy, USAC, at 2, 4 (dated Nov. 21, 2007) (Integrity Response Letter).

<sup>50</sup> *See* Request for Review at 16.

<sup>51</sup> *See* Letter from Paul C. Besozzi, Counsel for Integrity, to Jennifer McKee, FCC, CC Docket No. 02-6, Attach. (dated Apr. 10, 2009) (Integrity Compliance Plan).

<sup>52</sup> *See Feds Investigating Donna Schools for Use of E-rate Funds*, Education Week, Sept. 21, 2007.

<sup>53</sup> *See id.*

<sup>54</sup> *See Long Ties Between Donna’s Ex-Super and Corpus Christi Firm*, Mid-Valley Town Crier, Aug. 3, 2007.

<sup>55</sup> *See Principles for Treating Entities Under Investigation*, <http://www.usac.org/sl/tools/reference/principles-for-treating-entities.aspx> (last visited Aug. 28, 2009).

improperly and unilaterally targeted Integrity without a basis in law or in fact.”<sup>56</sup> As discussed above, one of the Commission’s mandates to USAC is to prevent waste, fraud, and abuse in the E-rate program.<sup>57</sup> For example, in response to a 2000 General Accounting Office report, USAC implemented a number of procedural changes aimed at detecting and resolving instances of waste, fraud, and abuse, including increasing the number of audits and withholding suspect payments.<sup>58</sup> Accordingly, if USAC uncovers evidence of an E-rate violation, regardless of the context, USAC may not simply turn a blind eye – it is obligated to take action regarding the violation. In this case, the Audit Report contained factual information related to Integrity’s participation in the E-rate program.<sup>59</sup> We note that, although Integrity disputes whether its conduct violated the E-rate rules, it does not claim that any of the factual statements about Integrity in the Audit Report are incorrect. Based on the information in the Audit Report, we find that USAC properly took action related to Integrity to ensure compliance with the E-rate rules and to prevent waste, fraud, and abuse.

14. Second, we conclude that USAC was correct to require Integrity to file a compliance plan because the invoicing activity between Integrity and San Benito was inconsistent with the Commission’s “90-day” rule. The “90-day” rule states that “failure to pay more than 90 days after completion of service...presumptively violates our rule that the Beneficiary must pay its share.”<sup>60</sup> This 90-day timeframe is applicable to each of the progress invoices at issue, which stated that certain equipment and/or services had been installed or provided as of the date of the invoice.<sup>61</sup> Therefore, Integrity triggered the 90-day rule when it submitted invoices to San Benito stating that certain services had been completed. In addition, Integrity is incorrect in arguing that the 90-day rule did not apply in this case because the contract was executed prior to the effective date of the rule.<sup>62</sup> The 90-day rule became effective on October 13, 2004, and there was no grandfathering provision that would exempt E-rate participants from complying with the rule after that date, regardless of when they had entered into their contracts.<sup>63</sup> The 90-day rule applied to the four Integrity progress invoices that were submitted to San Benito between January 1, 2005 and August 10, 2005. Integrity’s contract with San Benito was not in violation of this rule; the contract and RFP merely stated that no payments would be made until the completion of the entire project. The contract did not state that Integrity would submit progress invoices that San Benito would not be required to pay.<sup>64</sup>

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<sup>56</sup> See Request for Review at 16.

<sup>57</sup> See *supra* para. 6.

<sup>58</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking and Order, 17 FCC Rcd. 1914, 1937, para. 58 (2002) (citing *Schools and Libraries Program, Report to the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate*, General Accounting Office, GAO-01-105, (December 2000)).

<sup>59</sup> See Audit Report at 1.

<sup>60</sup> *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15816, para. 24.

<sup>61</sup> See, e.g., Integrity Invoice No. 881725-062204-2 (for FCC Form 471 No. 471719) (dated Jun. 23, 2004); Integrity Invoice Details for FRN 881725, FCC Form 474 No. 471719.

<sup>62</sup> Request for Review at 5, 8, 20.

<sup>63</sup> See Request for Review at 7-8; *Schools and Libraries Universal Service Support Mechanism*, 69 Fed. Reg. 55,097 (Sept. 13, 2004) (announcing effective date of the *Schools and Libraries Fifth Report and Order*).

<sup>64</sup> See RFP at 11. We note that the 90-day rule results in the service provider being paid by both the applicant and USAC within the same timeframe. The terms of the contract and RFP were in compliance with the E-rate rules because there is no prohibition on deferring payment until the end of a project. The violation of the 90-day rule

15. Based on the record before us, we find that Integrity's actions caused San Benito to be in violation of the 90-day rule.<sup>65</sup> The contract and RFP stated that no payments would be made until the completion of the entire project.<sup>66</sup> Integrity sent invoices to San Benito stating that payment was "Due On Receipt," even though payment of such bills was against the terms and conditions of the contract and RFP.<sup>67</sup> Accordingly, Integrity's actions put San Benito out of compliance with the 90-day rule for almost two years.<sup>68</sup> We conclude, therefore, that USAC was correct to require Integrity to file a compliance plan to ensure that such incidents do not occur in the future.

16. The Audit Letter required that Integrity file with USAC a compliance plan to avoid the future rule violations that occurred in the San Benito project.<sup>69</sup> Specifically, the Audit Letter required that Integrity "develop and implement a plan to strengthen internal controls to ensure that when [Integrity] submits a SPI Form, your entity has in fact provided, or is in the process of providing, the services and/or equipment to the school district, and [Integrity's] receipt of upfront payments and/or progress payments is included in the relevant contract between [Integrity] and the school district."<sup>70</sup>

17. We have reviewed the compliance plan that Integrity filed with the Commission on April 10, 2009.<sup>71</sup> The compliance plan states in relevant part that "[a]ll invoices state payment due upon receipt, and we stress the importance for districts to make payment within the 90 days per FCC policy."<sup>72</sup> We find that Integrity's compliance plan does not sufficiently address the audit findings. We give Integrity the opportunity to file with USAC, within 15 days from the release date of this order, a compliance plan that plainly states that it does not currently participate in an invoicing arrangement similar to the arrangement at issue in this appeal, and that it will not participate in such arrangements in the future. For example, Integrity could state that it currently does not submit invoices to USAC with the knowledge that the customer is not obliged to pay "upon receipt." Integrity could also state that, in the future, if it enters into a contract that does not require the school to pay until completion of the project, it will not submit invoices to USAC until the project is complete. Once USAC has received Integrity's compliance plan, we direct

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occurred when Integrity submitted invoices that did not comply with the terms of the contract and which the school district had no contractual obligation to pay at the time they were submitted.

<sup>65</sup> Although San Benito did not pay its non-discounted share within 90 days of receiving Integrity's progress invoices, we agree with USAC that San Benito did not violate the rule requiring an applicant to pay its non-discounted share because San Benito paid its share prior to the audit. In the *Schools and Libraries Fifth Report and Order*, the Commission stated that "failure to pay more than 90 days after completion of service...presumptively violates our rule that the Beneficiary must pay its share." *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15816, para. 24. The fact that San Benito paid its share consistent with the terms of the contract effectively rebutted the presumption.

<sup>66</sup> See RFP at 11.

<sup>67</sup> See, e.g., Integrity Invoice No. Number 881726-062304 (dated June 23, 2004); RFP at 11.

<sup>68</sup> San Benito was out of compliance with the 90-day rule between January 1, 2005 (when Integrity submitted the second and third progress invoices to San Benito) and December 4, 2006 (when San Benito made its sole payment to Integrity).

<sup>69</sup> See Audit Report at 1.

<sup>70</sup> *Id.*

<sup>71</sup> See Integrity Compliance Plan.

<sup>72</sup> *Id.* at 2.



USAC to complete its review of the compliance plan within seven days after its filing. Consistent with its procedures, including any inquiries to confirm that no violations of the Commission's rules occurred, and to ensure that no waste, fraud or abuse of E-rate funds exist, USAC should then resume processing of Integrity's funding requests.<sup>73</sup>

18. As explained above, the Commission has charged USAC with monitoring compliance with the E-rate rules to prevent waste, fraud, and abuse.<sup>74</sup> To do this, USAC promulgates administrative procedures for dealing with applicants and service providers who are found to be non-compliant with Commission rules as the result of an audit.<sup>75</sup> We find, however, that USAC's implementation of such procedures should be modified to make clear that USAC must address potential rule violations uncovered in an audit regardless of whether the violating entity was the subject of the audit. In relevant part, the Non-Compliant Auditee administrative procedures that USAC files with the Commission state that

Applicants and service providers who are determined to be non-compliant with FCC rules after undergoing a USAC audit are sent a letter informing them that they will not receive funding commitments for their pending and/or future funding requests until they have adequately addressed the audit findings. If the auditee fails to respond to the auditee letter within the time period provided, or fails to adequately address the findings, pending funding requests will be denied. . . This protects against waste, fraud, and abuse by ensuring that USAC does not commit funds to applicants who are non-compliant with program rules.<sup>76</sup>

19. We agree with USAC that such procedures generally protect against waste, fraud, and abuse. However, we conclude that the procedures should be modified to make clear that they apply to any violation found within the course of an audit, even if the violating entity was not the actual subject of the audit. In this case, although the subject of the audit was San Benito, KPMG uncovered evidence of a violation by San Benito's service provider, Integrity. We believe that these procedures are applicable to Integrity, but find that USAC's relevant administrative procedure should be clarified specifically to include such entities.<sup>77</sup>

20. In response to Integrity's assertion that USAC should not have suspended processing of funding requests involving Integrity, we find that USAC's actions were consistent with its stated process for addressing E-rate funding requests when it is aware of a criminal or civil investigation of a service provider.<sup>78</sup> Specifically, at the time of the Audit Letter, USAC was aware of the Texas Education Agency report alleging that the Donna School District broke state purchasing laws when it awarded a \$6.6 million contract to Integrity without opening the bidding to competitive bids, and USAC was aware of the press reports in which the school officials in the Donna School District confirmed that the United States

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<sup>73</sup> See *infra* para. 21.

<sup>74</sup> See *supra* para. 6.

<sup>75</sup> As explained above, USAC files these administrative procedures annually for Commission review. *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15835, para. 80.

<sup>76</sup> USAC Administrative Procedures at 54.

<sup>77</sup> We direct USAC to make this change to its administrative procedures and to submit documentation confirming the change to the Commission within 60 days after the release of this order.

<sup>78</sup> See *supra* para. 11; Principles for Treating Entities Under Investigation, <http://www.usac.org/sl/tools/reference/principles-for-treating-entities.aspx> (last visited Aug. 28, 2009).

Department of Justice, Antitrust Division and the Commission had initiated an investigation of the Donna School District.<sup>79</sup> Although we cannot and do not confirm the existence of any such law enforcement investigation against Integrity, we recognize that USAC had before it presumably credible statements by school district officials regarding the pendency of an investigation. To the extent such an investigation did exist, USAC may have had to defer any inquiries to the subject(s) of the investigation with respect to guarding the E-rate program from waste, fraud and abuse until the conclusion of the law enforcement investigation. USAC, under its existing procedures, would need to complete any such inquiries to confirm that no violations of the Commission's rules occurred, and to ensure that no waste, fraud or abuse of E-rate funds exist, prior to issuing E-rate funds to any such entities.<sup>80</sup> As noted above, it is USAC's responsibility to ensure that E-rate support is paid out consistent with the E-rate rules and to refuse funding where USAC has evidence that demonstrates that the rules have not been met. Accordingly, and in compliance with its procedures, USAC should take steps to ensure that any funds it disburses to Integrity are consistent with E-rate program rules.

21. Integrity also argues that USAC should not have sent a copy of the Audit Letter to Integrity's other E-rate applicant schools and should not have suspended funding on other projects until Integrity filed the compliance plan.<sup>80</sup> At the time that USAC took these actions, it understood that the Wireline Competition Bureau had approved the format of its Non-Compliant Auditee Letter, and USAC had proposed to send this letter to all affected parties, including all related E-rate applicants, if a service provider failed to respond adequately regarding non-compliant audit findings.<sup>81</sup> Consistent with this understanding, USAC acted reasonably at the time in sending out the Audit Letter to Integrity's E-rate applicant schools and in suspending funding to other projects until Integrity filed its compliance plan. However, with respect to adverse audit findings on a going-forward basis, USAC should not send an audit letter to or hold funding for schools or service providers unless it has evidence and a reasonable basis to believe that the service provider or school is engaged in a violation of the Commission's rules with respect to that specific school district. It is important to strike a balance between fairness and preventing waste, fraud and abuse. With respect to audits, USAC should not halt funding unless it has cause to believe that a particular school, and/or service provider with respect to a particular school, may be in violation of the Commission's E-rate rules. If the factual situation present in Integrity's case were to arise in the future, absent other evidence of wrongdoing, USAC would be acting appropriately to halt funding with respect to Integrity and San Benito, but USAC should not halt funding to other schools using Integrity as their service provider without first taking steps to determine whether similar contractual provisions exist between those schools and Integrity.

#### IV. ORDERING CLAUSES

22. 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 Expedited Review filed by Integrity Communications, Ltd., on December 26, 2007, IS DENIED as discussed herein.

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<sup>79</sup> See *Feds Investigating Donna Schools for Use of E-rate Funds*, Education Week, Sept. 21, 2007.

<sup>80</sup> See, e.g., USAC website, Step 8: Undergo Selective Review, <http://www.usac.org/sl/applicants/step08/undergo-selective-review/default.aspx> (last visited Aug. 28, 2009).

<sup>80</sup> Request for Review at 21-23.

<sup>81</sup> See *Wireline Competition Bureau Seeks Comment on the Universal Service Administrative Company's Audit Resolution Plan*, CC Docket No. 02-6, Public Notice, 20 FCC Rcd 1064 at Attach. (Wireline Comp. Bur. 2004).

23. 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 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), section 54.722(a) of the Commission's rules, 47 C.F.R. § 54.722(a), that Integrity Communications, Ltd. SHALL FILE a compliance plan with the Universal Service Administrative Company within 15 days after the release of this order, consistent with this order.

24. 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 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 Universal Service Administrative Company SHALL COMPLETE its review of Integrity Communications, Ltd.'s compliance plan no later than seven business days after receipt of the compliance plan and, in accordance with its practices for protecting against waste, fraud and abuse, resume processing of Integrity Communications, Ltd.'s funding requests consistent with this order.

25. 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 sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Universal Service Administrative Company SHALL FILE amended administrative procedures, consistent with this order, within 60 days from the release date of this order.

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

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Deputy Chief  
Wireline Competition Bureau