

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a Decision of the
Universal Service Administrator by
Paterson School District
Paterson, New Jersey
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-397016
CC Docket No. 02-6

ORDER

Adopted: November 2, 2006

Released: November 2, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant an appeal of a decision by the Universal Service Administrative Company (USAC) that rescinded funding already committed to the Paterson School District (Paterson) for discounted services under the schools and libraries universal service support mechanism (E-rate program) for Funding Year 2004. Specifically, we find that Paterson did have a valid contract that covered Funding Year 2004, and thus reverse USAC's determination of this issue. We remand the appeal to USAC for action consistent with this Order, and, to ensure that it is resolved expeditiously, we direct USAC to reinstate the funding commitment no later than 60 days from release of this Order.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, also known as 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, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support. In accordance with the Commission's rules, an applicant must

1 Paterson School District Request for Review, Form 471 Application Number 397016, Funding Request Number 1088764, received July 3, 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 Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c). Funding Year 2004 started on July 1, 2004, and ended on June 30, 2005.

2 47 C.F.R. §§ 54.501-54.503.

3 47 C.F.R. §§ 54.504, 54.511(c).

file with USAC, for posting to USAC's website, an FCC Form 470 requesting discounted services.<sup>4</sup> The applicant must then wait 28 days before entering into an agreement with a service provider for the requested services.<sup>5</sup> Once the school or library has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of the funds needed to cover the discounts to be given for eligible services.<sup>6</sup> The Commission's rules state that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."<sup>7</sup> Specifically, the FCC Form 471 instructions state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered.<sup>8</sup> To ensure that applicants are in compliance with the Commission's competitive bidding rules, applicants must file a new FCC Form 470 when the existing contract ends.<sup>9</sup>

3. Under program rules, applicants may purchase eligible services from "master contracts" negotiated by an appropriate third party such as a state governmental entity.<sup>10</sup> If the applicant files an FCC Form 470 and considers a state master contract as one of the bids, then the applicant must follow a competitive bidding process pursuant to FCC requirements and state and local procurement law.<sup>11</sup> Although the state master contract establishes terms of service, it is not itself a mutually binding agreement between the provider and the applicant seeking the services.<sup>12</sup> Applicants must indicate on their FCC Form 471 if the duration of the state master contract does not coincide with the funding year.<sup>13</sup> If a state master contract expires before the start of the next funding year, but the competitive bidding process is not complete, the applicant must indicate that it is unclear who the new service provider will be

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<sup>4</sup> 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).

<sup>5</sup> 47 C.F.R. § 54.504(b)(4). Applicants can enter into agreements of any length, as long as all providers have had the opportunity to compete for the same multi-year contract. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10 (1999).

<sup>6</sup> 47 C.F.R. § 54.504(c). *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

<sup>7</sup> 47 C.F.R. 54.504(c)

<sup>8</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471 Instructions).

<sup>9</sup> *Request for Review of New Albany-Floyd County Consolidated School Corporation, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-287615, CC Docket No. 02-6, Order, 20 FCC Rcd 8159, 8160-61, para. 5 (Wireline Comp. Bur. 2005).

<sup>10</sup> *See* 47 C.F.R. § 54.500(g) (defining "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 purchase directly from the service provider).

<sup>11</sup> *See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997).

<sup>12</sup> *Request for Review of Folsom Cordova Unified School District*, File No. SLD-81646, Order, 16 FCC Rcd. 20215, 20216, para. 3, n.10 (Com. Car. Bur. 2001).

<sup>13</sup> *See* USAC website, State Replacement Contracts, <http://www.universalservice.org/sl/applicants/step04/state-replacement-contracts.aspx>. July 1 is the start of the E-rate program funding year.

on Block 5 of the FCC Form 471.<sup>14</sup> Similarly, if the state master contract expires during the course of the next funding year and the competitive bidding process is not complete, the applicant must enter information concerning the existing master contract on its FCC Form 471 and indicate that there will be a replacement master contract.<sup>15</sup> In addition, if an applicant files its own FCC Form 470 and uses a state master contract to select a service provider, the applicant must memorialize its decision to purchase using the state master contract after the bidding process is complete and record the date as the Contract Award Date on the FCC Form 471.<sup>16</sup>

4. In Funding Year 2004, Paterson filed an FCC Form 470 and selected a State of New Jersey master contract bid for internal connections work.<sup>17</sup> On February 1, 2004, Paterson notified the service provider that it was using its services.<sup>18</sup> Paterson signed and submitted its FCC Form 471 on February 2, 2004.<sup>19</sup> The State of New Jersey master contract that Paterson used was initially awarded on February 1, 2000, for a period of one year.<sup>20</sup> While the state master contract contained a provision for a one-year voluntary extension, the State of New Jersey and the service providers covered by the contract agreed to several more contract extensions of varying lengths after the initial contract extension ended.<sup>21</sup> As a result, the extended state master contract that Paterson accepted was set to expire February 29, 2004, before the 2004 funding year began, even though Paterson's FCC Form 471 indicated that the master contract expired June 30, 2005.<sup>22</sup>

5. The State of New Jersey released an addendum to the master contract on February 23, 2004 that extended the contract until August 31, 2004.<sup>23</sup> The contract was later extended by the State of New Jersey until February 28, 2005,<sup>24</sup> and then again until June 30, 2005.<sup>25</sup> During a site visit to Paterson

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See USAC website, Contract Guidance, <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx>.

<sup>17</sup> Request for Review at 3. Paterson said that it did not receive any other bids and therefore used the state master contract. *Id.*

<sup>18</sup> Request for Review at Attachment C (Letter from Ralph Barca, Paterson Public Schools, to Greg Washburn, Cross Telecom, dated February 1, 2004) (Bid Acceptance Letter).

<sup>19</sup> FCC Form 471, Paterson Public Schools, certified Feb. 2, 2004 (Paterson FCC Form 471).

<sup>20</sup> Notice of Award for Telecommunications Equipment, awarded Feb. 1, 2000, available at <http://www.state.nj.us/treasury/purchase/noa/contracts/t1316.shtml#instruct> (New Jersey Master Contract).

<sup>21</sup> See, e.g., New Jersey Master Contract at Addendum #6, State of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, dated January 16, 2001 (extending the contract for a year from Feb. 1, 2001 to Jan. 31, 2002); New Jersey Master Contract at Addendum #10, State of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, dated Jan. 28, 2002 (extending the contract for four months from Feb 1, 2002 to May 31, 2002).

<sup>22</sup> Paterson FCC Form 471; New Jersey Master Contract at Addendum #22, State of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, dated May 30, 2003.

<sup>23</sup> New Jersey Master Contract at Addendum #25, State of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, dated Feb. 23, 2004. See also Letter from Toni Lello, of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, Information Technology & Communications Unit, to Mike McAndrews, Avaya, Inc., signed February 2, 2004 (Contract Extension).

<sup>24</sup> New Jersey Master Contract at Addendum #27, State of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, dated Aug. 30, 2004.

on August 11, 2005, USAC determined that Paterson did not have a contract in place for the relevant funding period and that the applicant did not indicate on its FCC Form 471 that there would be a replacement state master contract.<sup>26</sup> On January 24, 2006, USAC notified Paterson that it was rescinding its funding commitment in full for the internal connections at issue.<sup>27</sup> Paterson's service provider filed an appeal with USAC on behalf of the school district on March 3, 2006.<sup>28</sup> USAC rejected the appeal and Paterson then filed a Request for Review with the Commission.<sup>29</sup>

6. In its Request for Review, Paterson argues that USAC erred in rescinding funding already committed for Funding Year 2004 because the state master contract was in place when Paterson signed its FCC Form 471 and continued as a valid contract for the entire funding year.<sup>30</sup> Further, Paterson argues that USAC's rules on replacement contracts are not applicable in the instant case because the State of New Jersey had no intention of seeking new bids before or during the funding year, and the extension process simply continued the contract that the state had previously utilized.<sup>31</sup>

### III. DISCUSSION

7. We grant Paterson's appeal of the decision by USAC rescinding funding on the basis that Paterson did not have a signed valid contract that covered the entire funding year.<sup>32</sup> Section 54.504(c) requires that an applicant have a signed contract in place before filing its FCC Form 471.<sup>33</sup> The record demonstrates that Paterson accepted the service provider's offer of services pursuant to an existing state master contract before filing its FCC Form 471 and that the state master contract was continuously in effect throughout Funding Year 2004.<sup>34</sup> We find that USAC's policy on expiring state master contracts is not applicable to the instant situation because New Jersey simply extended the existing state master contract as it had done numerous times previously and did not intend to select a new service provider.<sup>35</sup> Because Paterson's service provider would not have changed, we find it had a valid contract with the service provider before it filed its FCC Form 471. Accordingly, we grant Paterson's Request for Review and remand its appeal to USAC for further processing consistent with our decision. To ensure that its

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<sup>25</sup> New Jersey Master Contract at Addendum #32, State of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, dated April 18, 2005.

<sup>26</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ralph Barca, Paterson School District, dated January 24, 2006 (Notification of Commitment Adjustment Letter).

<sup>27</sup> *Id.*

<sup>28</sup> Letter from Greg Washburn, Cross Telecom on behalf of Paterson School District, to Schools and Libraries Division, Universal Service Administrative Company, dated March 3, 2006 (Request for Appeal).

<sup>29</sup> Schools and Libraries Division, Universal Service Administrative Company, to Greg Washburn, Cross Telecom Corporation, dated May 5, 2006 (Administrator's Decision on Appeal); Request for Review.

<sup>30</sup> Request for Review at 5-6.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> Request for Review.

<sup>33</sup> *Id.*

<sup>34</sup> See Bid Acceptance Letter; Paterson FCC Form 471.

<sup>35</sup> The same master contract is still in effect and has been extended to Oct. 31, 2006. See New Jersey Master Contract at Addendum #40, State of New Jersey, Department of Treasury, Division of Purchase and Property Purchase Bureau, dated April 26, 2006.

Request for Review is resolved expeditiously, we direct USAC to reinstate the funding commitment no later than 60 days from the release of this Order.

#### IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS 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. §§ 151-154 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 Paterson School District, Paterson, New Jersey IS GRANTED and IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

9. 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. §§ 151-154 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 REINSTATE the funding commitment no later than 60 calendar days from release of this Order.

10. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau