

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Academy of Careers and Technologies)	File Nos. SLD-418938, <i>et al.</i>
San Antonio, TX, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 2, 2006

Released: May 19, 2006

By the Commission:

I. INTRODUCTION

1. In this Order, we grant 30 appeals of decisions by the Universal Service Administrative Company (“Administrator” or “USAC”) denying 134 requests for funding from 96 participants in the schools and libraries universal service support mechanism on the grounds that they violated the Commission’s competitive bidding rules.¹ As explained below, we find that USAC improperly denied the requests for funding without sufficiently examining whether the Commission’s rules were violated due to improper third-party participation in the applicants’ competitive bidding processes, and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order. In addition, we direct the Administrator to conduct further investigation and analysis prior to denying funding for suspected competitive bidding violations of the type addressed herein, and to provide applicants with an opportunity to demonstrate that they did not violate the Commission’s competitive bidding rules. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, apply for discounts for eligible telecommunications services, Internet access, and internal connections.² The applicant, after developing a technology plan, files the FCC Form 470 (“Form 470”) with the Administrator to request discounted

¹ The list of appeals is attached in the Appendix. These Requests for Review were filed pursuant to sections 54.719-54.721 of the Commission’s rules. 47 C.F.R. §§ 54.719-54.721.

² 47 C.F.R. § 54.505.

services.³ The Form 470 is posted on USAC's website for at least 28 days, during which time interested service providers may submit bids to provide the requested services.⁴ The applicant must consider all submitted bids prior to entering into a contract; price must be the primary factor in selecting a bid.⁵ Under the Commission's competitive bidding rules, the service provider may not participate in the bidding process.⁶ After entering into a contract for eligible services, the applicant files the FCC Form 471 ("Form 471").⁷ USAC assigns a funding request number ("FRN") to each request for discounted services, and issues funding commitment decision letters ("FCDLs") approving or denying the requests for discounted services.

3. Among other things, USAC is responsible for administering the application process for the schools and libraries universal service support mechanism.⁸ Pursuant to this authority, USAC developed a procedure to detect applications that may be in violation of the Commission's competitive bidding rules by searching for similar language used in Form 470s filed by other schools, libraries, and consortia that selected the same service provider through their competitive bidding processes.⁹ This procedure, described by USAC as "pattern analysis," contemplates the possibility that a group of applicants, all with the same service provider, violated the competitive bidding rules.

4. The Commission has under consideration 30 appeals filed by parties that have requested funding for discounted services under the schools and libraries universal service support mechanism.¹⁰ Petitioners appeal decisions denying requests for funding from the schools and libraries universal service support mechanism due to a failure to comply with the Commission's competitive bidding rules, as identified by USAC's "pattern analysis" procedure. These 30 applicants had in total selected eight service providers.¹¹ Many of these applicants are among the neediest schools and libraries in the country; we estimate that more than 75% of these applicants were eligible for a 90 percent discount on eligible services. We further estimate that these 30 appeals involve approximately \$38 million in funding for 99 applicants for funding during Funding Years 2002-2004, and note that these funds have already been

³ If the technology plan has not been approved when the applicant files the Form 470, the applicant must certify that it understands that the technology plan must be approved prior to commencement of service. 47 C.F.R. § 54.504(b)(2)(vii).

⁴ 47 C.F.R. § 54.504(b)(4).

⁵ 47 C.F.R. § 54.511(a).

⁶ See *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4032-33, para. 10 (2000).

⁷ This form is to request discounts on those services and it contains the discount calculation worksheet and the discount funding request. The Form 471 generally must be filed each time a school or library orders telecommunications services, Internet access, or internal connections. See 47 C.F.R. §§ 54.504, 54.511(c).

⁸ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25064-65, para. 12 (1998).

⁹ See email from Catriona Ayer, USAC, to Vickie Robinson, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC (May 2, 2005).

¹⁰ See Appendix.

¹¹ The selected service providers were: Spectrum Communications, Diversified Computer Solutions, SEND Technologies, Communications Data and Security, VIP Technologies, Ed Tec Solutions, American Internet Group, and RGC and Associates.

collected and held in reserve. Therefore, our actions taken in this Order should have minimal impact on the Universal Service Fund (“USF”).¹²

5. After identifying applications that incorporate similar language through its “pattern analysis” procedure, USAC typically informs applicants that “similarities in Forms 470 among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding and vendor selection process,” and rejects the applicants’ FRNs.¹³ Although the precise language may vary slightly, the record before us indicates that no other detail concerning a violation of Commission rules is provided to applicants.¹⁴ That is, USAC denied the applicants’ requests for funding solely based on this pattern analysis procedure; the record does not indicate that USAC made any formal findings or gathered additional facts prior to denying the requests for funding, or that USAC identified any school-specific violations of our competitive bidding rules.

III. DISCUSSION

6. After reviewing the record, we grant the instant Requests for Review and remand them to USAC for further consideration. We conclude that USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicants’ bidding processes. In short, USAC presumed that these schools violated the competitive bidding rules based on a review of another applicant’s information, and without performing any applicant-specific evaluations. The “pattern analysis” procedure may be helpful to identify applications for further review to determine if the applicant violated our competitive bidding rules; however, the mere presence of similar language in Form 470s by different program participants ultimately selecting the same service provider is not sufficient evidence of a rule violation. Indeed, there are many legitimate reasons why applicants could have used similar language in their applications; for example, they may have used the same consultant, attended the same seminar or training program, or modeled their responses from the same website.¹⁵ None of these legitimate reasons would support a finding that the school or library violated the competitive bidding rules. It appears from the record, however, that USAC never attempted to ascertain the reason for similar applications prior to denying funding based on its “pattern analysis” procedure or obtain additional information to determine whether the applicant violated the competitive bidding rules. In one group of denied Funding Year 2004 applications, for example, one of the “similarities” was the school identifier assigned by the state.¹⁶ According to this petitioner, SEND Technologies, “USAC remained unaware that the similarities were easily explained and were not indicative of rule violations or

¹² See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005, dated August 2, 2005. With further investigation, as discussed in this Order, USAC can determine which of these applications should be granted and which involve violations of our competitive bidding rules. In addition, USAC will ascertain whether the relief sought by the applicant was in fact granted in a subsequent year, but the applicant neglected to withdraw the appeal.

¹³ This explanation is in the FCDLs for each of the applicants listed in the Appendix. In some of the files, the language varies, e.g., “similarities in Forms 470 and selective review responses among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding process.”

¹⁴ See, e.g., Consolidated Request for Review of the Decisions of the Universal Service Administrator, Morehouse Parish School District and Jackson Parish School District, at 4-5 (filed Jan. 10, 2005) (“Morehouse and Jackson Appeal”).

¹⁵ See, e.g., Rosemead Elementary Unified School District Request for Review at 2-4 (filed Nov. 21, 2004).

¹⁶ See Letter from Jennifer L. Richter, Patton Boggs LLP, Counsel to Nexus Systems, Inc. and Send Technologies, LLC to Marlene H. Dortch, Secretary, FCC, filed in CC Docket No. 02-6 (July 8, 2005) at 2 (“July 8, 2005 Letter”).

impermissible service provider involvement.”¹⁷ In addition, the record reflects that USAC failed to identify the specific language in the Form 470s that it deemed “similar.”¹⁸ We agree with the Petitioners that without specific information to determine the basis for the denial, applicants cannot provide comprehensive responses to USAC’s arguments.

7. For these reasons, we find that when USAC suspects that a service provider has improperly participated in an applicant’s bidding process due to the results of its “pattern analysis” procedure, it is incumbent on USAC to conduct further investigation and analysis prior to denying funding.¹⁹ Specifically, USAC should review these applications fully, and should not issue summary denials of requests for funding solely because applications contain similar language. If an entity is able to demonstrate that it fully complied with all program rules and did not, for example, violate the Commission’s competitive bidding rules, then USAC should not deny funding on the basis of the “pattern analysis” procedure. We therefore grant the Requests for Review listed in the Appendix attached to this Order and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order.²⁰ To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

8. We recognize that some beneficiaries may have violated the competitive bidding rules and that shared facts may help uncover violations of our rules or waste, fraud, and abuse committed by other beneficiaries. Indeed, we recognize the utility of USAC’s pattern analysis of helping to identify malfeasance. A pattern analysis alone, however, does not determine that an applicant has violated program rules or engaged in waste, fraud, or abuse. Based on the existing program rules, USAC should not stop its review of an application and conclude that the applicant violated program rules (and then deny the funding request) solely because the application shares some language with that of another applicant who selected the same service provider. Instead, USAC should continue its evaluation to determine whether funding is warranted and whether the applicants violated program rules, including those concerns initially identified through the “pattern analysis” process. As part of its review, USAC may request that applicants submit documentation establishing the source of the language that is similar to that found in other applications. Upon completing its review, if USAC finds that the application complies with all

¹⁷ July 8, 2005 Letter at 2.

¹⁸ See, e.g., July 8, 2005 Letter at 2; Morehouse and Jackson Appeal at 4-5; Letter from Lila Wills Bronson, Ed.D, Director of Technology, Rosemead Elementary School District to Marlene H. Dortch, Secretary, FCC (June 20, 2003) at 4-5.

¹⁹ During the application review process, USAC may request additional information from applicants. See *Request for Review of the Decision of the Universal Service Administrator by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 95-45 and 97-21, Order, DA 99-2284, para. 3 (Com. Car. Bur., rel. Oct. 22, 1999) (“*Nefesh Academy Order*”). To ensure that the application review process for the schools and libraries program is not unduly delayed, USAC requires applicants to supply information within a reasonable time period or risk denial of the funding request. *Nefesh Academy Order* at para. 3.

²⁰ We note, however, that many of the pending appeals addressed in this Order date from Funding Year 2002, and that, due to the passage of time, such evidence may no longer be available. For example, the employees who prepared the Form 470 may have left the school system since the application was filed. USAC should look at the totality of the circumstances, including an explanation as to why evidence may no longer be available. On a going-forward basis, we expect that applicants will have better documentation to support their applications. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15823-24, para. 47 (requiring applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year).

applicable program rules and that USF funding is warranted, it should authorize funding. We recognize that, after USAC completes its application review procedures for the appeals identified in this Order, it may conclude that funding is not warranted and deny the request.

IV. ORDERING CLAUSES

9. 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 sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that any and all pending appeals before this Commission identified in the Appendix of this Order ARE REMANDED to the Administrator for further consideration in accordance with the terms of this Order.

11. 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, USAC SHALL COMPLETE its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**A. Requests for Review Filed By Applicants for E-Rate Funding**

Applicant	Service Provider	Application Number	Funding Year
Academy of Careers and Technologies San Antonio, TX	RGC and Associates, Inc.	418938	2004
El Paso School of Excellence El Paso, Texas	RGC and Associates, Inc.	408268	2004
Lake Grove at Maple Valley, Inc., Lake Grove Schools Wendall, MA	Ed Tec Solutions, LLC	380920	2003
Lake Grove Durham School, Lake Grove Schools Durham, CT	Ed Tec Solutions, LLC	380528	2003
Lake Grove Schools Lake Grove, NY	Ed Tec Solutions, LLC	381301	2003
Mountain Lake Children's Residence, Inc., Lake Grove Schools Lake Placid, NY	Ed Tec Solutions, LLC	380723	2003
Positive Solutions Consortium San Antonio, TX	RGC and Associates, Inc.	409745	2004
Rosemead Elementary School District Rosemead, CA	Spectrum Communications Cabling Services, Inc.	303357	2002
Webster Parish School District	SEND Technologies, LLC	363968	2003
Yeshiva Masoras Avos Lakewood, NJ	Communications Data and Security, Inc.	294999	2002
Yeshiva Masoras Avos Lakewood, NJ	Communications Data and Security, Inc.	347572	2003
Yeshivath Viznitz D'Khal Torath Chaim Monsey, NY	Communications Data and Security, Inc.	287318	2002

B. Requests for Review Filed by Service Providers on Behalf of Individual Applicants

Service Provider	Applicant	Application Number	Funding Year
American Internet Group, LLC	Plymouth Educational Center Charter Schools Detroit, MI	428762	2004
Independent Computer Maintenance, LLC	Al-Ghazaly Elementary School Jersey City, NJ	310917	2002
Independent Computer Maintenance, LLC	Dar Al-Hikmah Elementary School	310459	2002

	Prospect park, NJ		
Independent Computer Maintenance, LLC	Horizon School Livingston, NJ	316671	2002
Independent Computer Maintenance, LLC ²¹	Kearny Christian Academy Kearny, NJ	307730	2002
Independent Computer Maintenance, LLC	New Visions Academy Newark, NJ (Diversified Computer Solutions was former service provider)	309196	2002
Spectrum Communications Cabling Services, Inc.	Corona-Norco Unified School District Norco, CA	362456	2003
Spectrum Communications Cabling Services, Inc.	Rosemead Elementary Unified School District Rosemead, CA	366569	2003

C. Consolidated Requests for Review Filed by Service Providers on Behalf of Individual Applicants

1. Applications Consolidated in a Request for Review filed by Communications Data and Security, Inc., filed June 14, 2004:

Applicant	Application Number	Funding Year
Bais Chinuch Hayoshen Monsey, NY	294981	2002
Bais Tova	287825	2002
Bais Yaakov High School of Lakewood, Inc.	287451	2002
Beth Rivka School Brooklyn, NY	287822	2002
Bnos Chayil	288799	2002
Congregation Bnai Yoel Monroe, NY	300877, 293323, 322057	2002
Congregation Machzikei Hadas of Belz	293889	2002
Congregation Noam E. Lizensk	287796	2002
Congregation Noiam Mgodim	296699, 322734	2002
Generation Christian Academy	297919	2002
Kavanas Halev	294702, 287455	2002
Lakewood Cheder School	287220	2002
Machne Karlin Stolin	313957	2002
Midrach L'Man Achai	324976, 300353, 294833	2002

²¹ Kearny Christian Academy also filed its own Request for Review for the same FCC Form 471 application number on August 30, 2004.

Shaar Ephraim	287472	2002
Talmud Torah Bais Yecheil	287833	2002
Talmud Torah of Lakewood	287134, 287198	2002
Talmud Torah Tzoin Yosef Pupa, Inc.	287216	2002
Tiferes Academy	304794	2002
Toras Imecha	292962	2002
United Talmudical Academy Monroe, NY	295523, 295698, 295714, 307138, 293464, 291564	2002
Viznitzer Chaider Tiferes Yisroel	293267, 293268, 294911	2002
Westchester Special Education School	298475	2002
Yeshiva Avir Yakov	294954, 295067, 305386	2002
Yeshiva Beth David School	300860, 300896	2002
Yeshiva Bnos Ahavas Israel	287293, 287295, 321381	2002
Yeshiva Imrei Chaim Viznitz of Borobark	293311	2002
Yeshiva Imrei Yosef School	301267, 293315	2002
Yeshiva Jesode Hatorah	293419, 295822	2002
Yeshiva Kehilath Yakov School	316264	2002
Yeshiva Masoras Avos	294999	2002
Yeshiva Sharei Hayosher School Brooklyn, NY	307166, 307180	2002
Yeshiva Toras Chaim	317828	2002
Yeshiva Tzemach Tzadik Viznitz	295300	2002
Yeshiva Zichron Mayir	287235, 287238	2002
Yeshivath Viznitz D'Khal Torath Chaim	307499, 287319	2002

2. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 19, 2005:

Applicant	Application Number	Funding Year
California Academy for Liberal Studies Los Angeles, CA	345392	2003
Crystal Springs School A Program of IDDI Assonet, MA	345507	2003
Green Chimneys School Brewster, NY	378380	2003
Leary School – Prince Georges County Oxon Hill, VA	345527	2003

Leary School of Virginia Alexandria, VA	345533	2003
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3. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 18, 2005:

Applicant	Application Number	Funding Year
Family Charter School Philadelphia, PA	345475	2003
Green Chimneys School Brewster, NY	345498	2003
Westchester Special Ed School Yonkers, NY	345491	2003

4. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 19, 2005:

Applicant	Application Number	Funding Year
Audrey Lorde School New York, NY	345394	2003
Graydon Manor School Leesburg, VA	345402	2003

5. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed August 23, 2004:

Applicant	Application Number	Funding Year
Richland Parish School District Rayville, LA	291953	2002
Morehouse Parish School District Bastrop, LA	301743	2002

6. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed January 10, 2005 :

Applicant	Application Number	Funding Year
Jackson Parish School District Jonesboro, LA	376220	2003
Morehouse Parish School District Bastrop, LA	360815	2003

7. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed January 18, 2006 :

Applicant	Application Number	Funding Year
Jackson Parish School District Jonesboro, LA	423981	2004
Morehouse Parish School District Bastrop, LA	409404	2004
Franklin Academy Winnsboro, LA	412894	2004

8. Applications Consolidated in Request for Review filed by Spectrum Communications Cabling Services, Inc., filed June 19, 2003:

Applicant	Application Number	Funding Year
El Monte Unified School District El Monte, CA	311437	2002
Hemet Unified School District Hemet, CA	295589	2002
Inglewood Unified School District Inglewood, CA	313520	2002
Lucerne Valley Unified School District Lucerne Valley, CA	314228	2002
Romoland Elementary School District Homeland, CA	305956	2002
Rosemead Elementary Unified School District Rosemead, CA	303357	2002

9. Applications Consolidated in Request for Review filed by VIP Technologies, LLC., filed March 8, 2005:

Applicant	Application Number	Funding Year
Alachua Learning Center Alachua, FL	418579	2004
Audrey Lorde School New York, NY	418559	2004
Bethesda Childrens' Home Meadville, PA	411830	2004
Chimes School Baltimore, MD	421161	2004
Crystal Springs School, a program of IDDI Assonet, MA	411722	2004

Everglades Preparatory Academy Pahokee, FL	418626	2004
Family Charter School Philadelphia, PA	411674	2004
Gateway-Lynde School Buffalo, NY	418701	2004
Glades Academy of Agricultural and Ecological Studies Pahokee, FL	418682	2004
Green Chimneys School Brewster, NY	411712	2004
Highville Mustard Seed Charter School Hamden, CT	420329	2004
James M. Singleton Charter Middle School New Orleans, LA	412567	2004
Lakeview Charter Academy San Fernando, CA	429410	2004
Lift for Life Academy St. Louis, MO	418553	2004
Macsa Academic Calmecac San Jose, CA	427482	2004
North County Charter School Opalocka, FL	431395	2004
School of Excellence in Education Charter School San Antonio, TX	418635	2004
Survivors Charter School West Palm Beach, FL	418464	2004
The Chiles Academy Port Orange, FL	412585	2004
Torah High School of Long Beach Long Beach, NY	425176	2004
Woods School Langhorne, PA	412885	2004
Yeshiva Tiferes Torah School Lakewood, NJ	430667	2004
Youth Opportunities Upheld, Inc. Worcester, MA	418598	2004

10. Applications Consolidated in a Request for Review filed by VIP Technologies, LLC., filed February 15, 2005:

Applicant	Application Number	Funding Year
Florida International Academy Miami, FL	411456	2004
Golden Rule Charter School Dallas, TX	412493	2004
Redemptive Life Academy West Palm Beach, FL	415411	2004
New Frontier Charter School San Antonio, TX	418517	2004
Tri-L Christian Academy Orlando, FL	424917	2004
Parkway Academy Miramar, FL	431407	2004
Northeast Academy 1 Opalocka, FL	431840	2004
Downtown Miami Charter School Miami, FL	432551	2004