

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

|   |   |                     |
|---|---|---------------------|
| In the Matter of                        | ) |                     |
|   | ) |                     |
| Requests for Review by                  | ) |                     |
|   | ) |                     |
| Macomb Intermediate School District     | ) | File No. SLD-441910 |
| Technology Consortium                   | ) |                     |
| Clinton Township, MI                    | ) |                     |
|   | ) |                     |
| Schools and Libraries Universal Service | ) | CC Docket No. 02-6  |
| Support Mechanism                       | ) |                     |

**ORDER**

**Adopted: April 19, 2007**

**Released: May 8, 2007**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we grant in part and deny in part an appeal filed by Macomb Intermediate School District Technology Consortium, Clinton Township, Michigan (Macomb ISD) of a decision by the Universal Service Administrative Company (USAC) denying Macomb ISD funding for discounted services under the schools and libraries universal service support mechanism (E-rate program).<sup>1</sup> We find that Macomb ISD violated section 54.511 of the Commission's rules by not selecting the most cost-effective service offering among the bids considered.<sup>2</sup> We note, however, that Macomb ISD is entitled to E-rate program funding in an amount associated with the least expensive of the duplicative services. We therefore remand Macomb ISD's Request for Review to USAC for further review consistent with this Order and, to ensure it is resolved expeditiously, direct USAC to issue an award or denial based on a complete review and analysis of the underlying application 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.<sup>3</sup> 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

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<sup>1</sup> Letter from Mark Cummins, Macomb Intermediate School District, to Federal Communications Commission, filed Feb. 24, 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).

<sup>2</sup> 47 C.F.R. § 54.511.

<sup>3</sup> 47 C.F.R. §§ 54.501-54.503.

bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's rules, an applicant must file with USAC, for posting to USAC's website, an FCC Form 470 requesting discounted services.<sup>5</sup> The applicant must then wait 28 days before entering into an agreement with a service provider for the requested services.<sup>6</sup> An applicant's request for discounts should be based on the reasonable needs and resources of the applicant, and bids for services should be evaluated based on cost-effectiveness.<sup>7</sup>

3. Applicants may only seek support for services eligible for support.<sup>8</sup> Each year, the Commission releases a revised list of eligible services to assist applicants in their efforts to request only eligible services.<sup>9</sup> When USAC reviews an application and identifies an ineligible service it will deny funding for that service. In addition, if the total requested for ineligible services exceeds 30 percent of the total for any individual funding request, the Commission's rules require USAC to deny the entire funding request.<sup>10</sup> The Commission has also found that applicants must select the most cost-effective service offering, and price should be the primary factor considered when determining which service offering is the most cost-effective.<sup>11</sup> Pursuant to this requirement, requests for duplicative services, described as services that provide the same functionality for the same population in the same location during the same period of time, will be rejected.<sup>12</sup>

4. Macomb ISD has requested review of USAC's decision to deny funding for Macomb ISD's Funding Year 2005 application because USAC found Macomb ISD requested duplicative T3 connections to provide Internet access for its school district.<sup>13</sup> On November 1, 2004, Macomb ISD posted an FCC Form 470 seeking bids for one or more T3 internet connections, indicating that it was

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<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>5</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>6</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>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029-9030, 9078, paras. 481, 574 (1997) (*Universal Service Order*); *see also Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26406, 26429, para. 50 (2003); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (codifying 47 C.F.R. § 54.511(a)) (*Second Report and Order*); *School and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (*Fifth Report and Order*) (codifying 47 C.F.R. § 54.504(b)(2)(vii) and 47 C.F.R. § 54.504(c)(1)(xi)).

<sup>8</sup> *See* 47 C.F.R. § 54.504; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, at 17 (October 2000) (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities and uses); *see also Request for Review by Chelmsford Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-121771, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 761, 762, para. 3 (Com. Car. Bur. 2002).

<sup>9</sup> *See* 47 C.F.R. § 54.522.

<sup>10</sup> *See* 47 C.F.R. § 54.504(d).

<sup>11</sup> 47 C.F.R. § 54.511; *see also Second Report and Order*, 18 FCC Rcd at 9210-11, para. 24

<sup>12</sup> *Universal Service Second Report and Order*, 18 FCC Rcd at 9209-10, paras. 22-23.

<sup>13</sup> *See Request for Review at 2.*

possibly seeking multiple contracts.<sup>14</sup> On February 17, 2005, Macomb filed an FCC Form 471 for four Funding Request Numbers (FRNs) for Internet access.<sup>15</sup> Two of the funding requests were for three T3 Internet connections for the entire funding year: two of the T3 connections from XO Michigan, Inc., and the third T3 connection from Sprint Communications Co., L.P.<sup>16</sup> The other two funding requests were for two T3 Internet connections for the second half of the year from Sprint Communications Co., L.P. and Qwest Communications Corp.<sup>17</sup> On September 21, 2005, USAC issued a funding commitment decision letter denying all four FRNs because the “service/product is not being used in accordance with program rules.”<sup>18</sup> USAC did not mention which program rule was at issue in the funding denial.<sup>19</sup> Macomb ISD then filed an appeal with USAC assuming, based on earlier USAC information requests, that its funding was denied because USAC believed that its services were duplicative.<sup>20</sup>

5. In its appeal to USAC, Macomb ISD argued that it did not violate the Commission’s rule on duplicative services when it requested Internet access from three separate service providers because it was only seeking support for the services it needs.<sup>21</sup> Instead of seeking to purchase all of the T3 connections from a single service provider, Macomb ISD sought identical services from different providers to reduce the reliance of the school district on any single provider’s network during an outage—a practice called “multihoming.”<sup>22</sup> USAC denied Macomb ISD’s appeal, stating that multihoming “is not an eligible use of service according to program rules.”<sup>23</sup> USAC also determined that, because more than 30 percent of Macomb ISD’s funding request was for ineligible “redundant [I]nternet service providers,” the entire funding request would be denied.<sup>24</sup> Macomb ISD subsequently filed the instant Request for Review with the Commission.<sup>25</sup>

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<sup>14</sup> FCC Form 470, Macomb Intermediate School District Technology Consortium, posted Nov. 1, 2004 (Macomb FCC Form 470).

<sup>15</sup> FCC Form 471, Macomb Intermediate School District Technology Consortium, certified Feb. 17, 2004 (Macomb FCC Form 471).

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

<sup>17</sup> *Id.*

<sup>18</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Thomas R. Juett, Macomb Intermediate School District Technology Consortium, dated Sep. 21, 2005 (Funding Commitment Decision Letter).

<sup>19</sup> *Id.* Macomb ISD said USAC’s helpline provided no additional information on the nature of the alleged rule violation. Request for Review at 3.

<sup>20</sup> Letter from Mark Cummins, Macomb Intermediate School District, to Schools and Libraries Division, Universal Service Administrative Company, dated Oct. 31, 2005 (Appeal to USAC).

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mark Cummins, Macomb Intermediate School District Technology Consortium, dated Dec. 28, 2005 (Administrator’s Decision on Appeal).

<sup>24</sup> *Id.*

<sup>25</sup> *See* Request for Review.

### III. DISCUSSION

6. We deny in part and grant in part Macomb ISD's Request for Review. We uphold USAC's determination that Macomb ISD violated program rules by not selecting the most cost-effective service offering. We find, however, that the 30 percent rule is inapplicable in this instance and Macomb ISD is entitled to the E-rate reimbursement associated with the T3 connections that are the most cost effective.

7. As noted above, the Commission has found that discounts be awarded to meet the "reasonable needs and resources" of applicants.<sup>26</sup> In the instant case, we find it would have been more cost effective for Macomb ISD to seek the T3 services it needed from a single, lowest bidder. Macomb ISD's application for funding shows that the services it received from XO Michigan, Inc. were less expensive than the same service offered by the other two providers.<sup>27</sup> Based on the costs submitted in its application, had Macomb ISD purchased all of its T3 connections from XO Michigan, Inc., it would have saved more than \$36,000 on its Internet connections.

8. In its Request for Review, Macomb ISD cites to the 2006 Eligible Services List as evidence that the practice of seeking Internet connections from multiple providers is permissible under E-rate program rules.<sup>28</sup> The 2006 Eligible Services List states that although services that are duplicative will not be funded, "[s]ervices that provide necessary bandwidth requirements consistent with the applicant's Technology Plan, such as multiple T-1 lines when appropriate for the population served and the services to be received, are not duplicative."<sup>29</sup> We do not find fault with Macomb ISD's request for multiple T3 lines, provided that the services are needed. Commission rules, however, do not permit applicants to seek T3 lines from multiple service providers when the additional service providers' bids were not the most cost-effective.<sup>30</sup> Macomb ISD did not provide any evidence that the lowest-cost bidder was unable to provide the additional services requested. We find, therefore, that Macomb ISD violated section 54.511 of the Commission's rules and deny its request for review.

9. We also find, however, that in this case the 30 percent rule should not have been applied because the services themselves were not ineligible, just not the most cost-effective. Furthermore, we do not find any evidence of fraud or abuse. Therefore, we find that in this particular case, Macomb ISD should be entitled to E-rate funding for its Internet connections at a rate associated with the least expensive of the duplicative services.<sup>31</sup> To ensure these issues are resolved expeditiously, we direct USAC to complete its review of Macomb ISD's application and process the application in accordance with this Order no later than 60 calendar days from release of this Order.

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<sup>26</sup> See *Second Report and Order*, 18 FCC Rcd at 9209-10, para. 23.

<sup>27</sup> Macomb FCC Form 471. When calculated for yearly intervals, one T3 connection from XO Michigan, Inc. cost \$76,086, one T3 connection from Sprint Communications Corp., L.P., cost \$93,258 and one T3 connection from Qwest Communications Corp. cost \$99,000. Macomb ISD purchased more T3 connections from XO Michigan than the other service providers, which may explain the lower rate. It purchased the least amount of T3 capacity from Qwest, which had the highest rate. *Id.*

<sup>28</sup> Request for Review at 5.

<sup>29</sup> Eligible Services List, Schools and Libraries Support Mechanism for Fund Year 2006, [http://www.universalservice.org/\\_res/documents/sl/pdf/els\\_archive/2006-eligible-services-list.pdf](http://www.universalservice.org/_res/documents/sl/pdf/els_archive/2006-eligible-services-list.pdf).

<sup>30</sup> 47 C.F.R. § 54.511; see also *Second Report and Order*, 18 FCC Rcd at 9210-9211, para. 24.

<sup>31</sup> *Cf. Fifth Report and Order*, 19 FCC Rcd at 15816-17, para. 25 (in cases of improperly disbursed funding, the Commission found the amount associated with the most expensive of the duplicative services would be recovered).

10. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeal addressed here, this action in no way affects the authority of the Commission or USAC 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 service funds were improperly disbursed or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal process. We emphasize that we retain 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. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

11. 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, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Review filed by Macomb Intermediate School District Technology Consortium, Clinton Township, Michigan, IS DENIED in part and GRANTED in part and IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

12. 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, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), USAC SHALL ISSUE an award or a denial based on a complete review and analysis of the underlying applications no later than 60 calendar days from release of this Order.

13. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release, in accordance with section 1.103 of the Commission's rules, 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary