DOCKET FILE COPY ORIGINAL

Nathaniel Hawthorne
Attorney/Consultant, Ltd
Admitted: Ohio, Illinois, District of Columbia
nhawthorne @ earthlink.net
www.telecomlawyer.com

27600 Chagrin Blvd., Ste. 265
Cleveland OH 44122
tel: 216.514.4798; 216.514.4795
fax: 216.514.4865

Express Mail EO 923 730 926 US

RECEIVED & INSPECTED
AUG 14 2006
FCC - MAILROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

August 11, 2006

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

On June 7, 2006, Montgomery County School District filed an appeal from a decision by the Schools and Libraries Division of the USAC. On June 16, 2006, the FCC issued an Order in the Richmond County Appeal. Attachment A. It is directly related to Montgomery's Appeal.

Enclosed are the original and four copies of the Additional Authority.

An extra copy is also enclosed. Please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

Nathaniel Hawthorne

Nathaniel Hawthorne
Attorney for Montgomery County School District

Cc: Montgomery County School District

Or

RECEIVED & INSPECTED
AUG 1 4 2006
FCC - MAILROOM

Express Mail EO 923 730 926 US

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the	)	File No. SLD -
	)	
Appeal of the Decision of the	)	
	)	
Universal Service Administrator by	)	
the	)	
	)	
Montgomery County School District	)	
	)	
	)	
	)	CC Docket No. 96 - 45
Federal-State Joint Board on	)	
Universal Service	)	
Changes to the Board of Directors of	)	
The National Exchange Carrier	)	
Association, Inc.	)	CC Docket No. 97 - 21

Additional Authority
Montgomery County School District

A. Background recapped:

(1) **Funding Commitment Decision Letter Appealed**

Form 471 Application Number: 532303
Funding Year 9: 07/01/2006-06/30/2007
Billed Entity Number for district: 127337
Date of Funding Denial Notice: May 16, 2006
Date of Appeal: June 7, 2006

(2) **SLD Contact Information**

Scott Snead
Montgomery County School District
403 S. Fulton St
Mount Vernon GA30445
Tel. (912) 583-2301
Fax (912) 583-4822

(3) **Funding Request Numbers Appealed**

FRN: 1470423

B. Additional Authority

The FCC stated in relevant part that:

> 6. We grant Richmond County's appeals of the decision by USAC to deny Richmond County's Funding Year 2005 application for discounted services under the E-rate program as they pertain to Richmond County's contracts with Time Warner Cable and eChalk, LLC.[26] Based on the evidence submitted upon appeal, we find that Richmond County had legally binding contracts with Time Warner Cable and eChalk, LLC in place when submitting its FCC Form 471s.[27] In both cases, Richmond County produced contracts that were signed and dated before the certification date of its FCC Form 471s.[28] While Richmond County does not offer an explanation for the difference in the contract with Time Warner Cable submitted to USAC and to the Commission, the record contains no information to cause us to question the authenticity of the contract attached to its appeal with the Commission.[29] We also have no reason to doubt that the contract with eChalk, LLC was signed as of the effective date of the agreement.[30]
>
> 7. Furthermore, as it concerns Richmond County's contract with Novell, Inc., we find good cause exists to waive section 54.504(c) of the Commission's rules, which states that an applicant for E-Rate funding must have a legally binding contract in place upon submission of its FCC Form 471.[31] The record demonstrates that while Richmond County technically missed the program deadline for having a signed contract in place prior to submission of its FCC Form 471, Richmond County had a legally binding contract in place during Funding Year 2005 and before the vendor began providing services.[32] In fact, the agreement at issue was an extension of a pre-existing contractual arrangement between Richmond County and Novell, Inc.[33] Moreover, Richmond County's FCC Form 471 was certified only and prevent it from receiving E-rate funding. Finally, while the Commission's competitive bidding rules are a central tenet of the E-rate program, and a tool for preventing waste, fraud, and abuse, the record contains no evidence at this time that Richmond County engaged in activity intended to defraud or abuse the E-rate program. 8. Accordingly, we find that good cause exists to grant Richmond County a waiver of section 54.504(c) of the Commission's rules, and remand its appeals to USAC for further processing consistent with our decision.

5. *Waiver Standard.* The Commission may waive any provision of its rules on its own motion and for good cause shown.[22] A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.[23] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual Finally, while the Commission's competitive bidding rules are a central tenet of the E-rate program, and a tool for preventing waste, fraud, and abuse, the record contains no evidence at this time that Richmond County engaged in activity intended to defraud or abuse the E-rate program.

Here, the contract is dated February 15, 2006. The allowable contract date was February 07, 2006. The Contract award Date was Feb 15, 2006. The 471 was filed on February 15, 2006. For Form 471 Application Number 502303, FRN 1470423, all requirements were met. Said differently, based on the exhibits attached to the Appeal, the contract for the products/services were signed and dated by both parties prior to the filing of the Form 471. Again there is good reason to either rule that there was no violation by Montgomery of the FCC's rules or to grant a waiver, which Montgomery now request.

Conclusion:

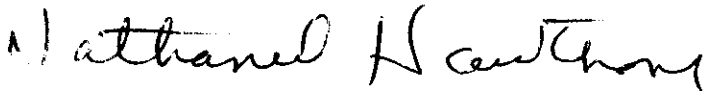
Montgomery is Requesting the Following Action by the FCC:

(a) Within 90 days <u>or less</u> Order funding for the telecommunications services requested in the 471 Application, specifically FRN: 1470423;

(b) Grant Montgomery County a waiver consistent with Richmond County; and

(c) Set aside funds to totally fund Montgomery County School District's request.

Respectfully submitted,



Nathaniel Hawthorne

District of Columbia Bar No. : 237693
27600 Chagrin Blvd., Ste. 265
Cleveland, OH 44122
Tel. 216/514.4798
E-mail: nhawthorne@earthlink.net

Attorney for Montgomery County School District

Cc: Montgomery County School District

Attachment A

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review by	)	
	)	
Richmond County School District Hamlet, NC	))	File Nos. SLD-451211, 452514, 464649
	)	
Schools and Libraries Universal Service Support Mechanism	))	CC Docket No. 02-6

ORDER

Adopted: June 13, 2006 **Released: June 13, 2006**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant three appeals of decisions by the Universal Service Administrative Company (USAC) filed by Richmond County School District, Hamlet, North Carolina (Richmond County) denying Richmond County funding for discounted services under the schools and libraries universal service support mechanism.[1] We grant two appeals on the merits and, for the third appeal, we waive section 54.504(c) of the Commission's rules, which states that an applicant for schools and libraries funding must have a legally binding agreement in place when it submits its FCC Form 471, because Richmond County's violation of this rule was only technical in nature and Richmond County's other actions mitigate any concern over the rule violation.[2] We remand the appeals to USAC for action consistent with this Order, and, to ensure that they are resolved expeditiously, we direct USAC to issue an award or denial based on a complete review and analysis of the underlying applications 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.[3]

---

[1] Letter from Suzanne Griffin, Richmond County School District, to Federal Communications Commission, filed January 6, 2006 (Request for Review for File No. SLD-452514); Letter from Suzanne Griffin, Richmond County School District, to Federal Communications Commission, filed January 6, 2006 (Request for Review for File No. SLD-452514); Letter from Suzanne Griffin, Richmond County School District, to Federal Communications Commission, filed January 10, 2006 (Request for Review for File No. SLD-451211) (collectively, Requests 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).

[2] 47 C.F.R. § 54.504(c).

[3] 47 C.F.R. §§ 54.501-54.503.

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.[4] 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.[5] The applicant must then wait 28 days before entering into an agreement with a service provider for the requested services.[6] 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.[7] 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."[8] Specifically, the instructions state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered.[9]

3. Richmond County has requested review of USAC's decision to deny funding for Richmond County's Funding Year 2005 application because three of its contracts were either not signed and/or dated prior to filing its FCC Form 471s.[10] In late January and early February of 2005, Richmond County filed three FCC Form 471s for eligible services with three separate service providers: Novell, Inc., Time Warner Cable and eChalk, LLC.[11] During selective review, USAC found that the documentation provided by Richmond County demonstrated that its contracts with the three service providers were either not signed and/or dated until after the submission of Richmond County's FCC Form 471s.[12] Thus, USAC

[4] 47 C.F.R. §§ 54.504, 54.511(c).

[5] 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).

[6] 47 C.F.R. § 54.504(b)(4). Applicants can enter into agreements of any length, as long 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).

[7] 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).

[8] *Id. See also Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003) (*Waldwick Order*); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002) (*St. Joseph Order*).

[9] Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471 Instructions).

[10] *See* Requests for Review at 1. *See also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Suzanne Griffin, Richmond County School District, dated Dec. 27, 2005 (Funding Commitment Decision Letter).

[11] FCC Form 471, Richmond County School District, certified January 25, 2005 (Richmond County FCC Form 471 for File No. SLD-451211); FCC Form 471, Richmond County School District, certified January 27, 2005 (Richmond County FCC Form 471 for File No. SLD-452514); FCC Form 471, Richmond County School District, certified February 10, 2005 (Richmond County FCC Form 471 for File No. SLD-464649).

[12] *See* Funding Commitment Decision Letter. *See also* Universal Service Administrative Company, Schools and Libraries Division, Exceptions and PIA Comments, Richmond County School District, March 3, 2006 (showing entity level notes from November 11, 2005). USAC selects some applicants for a Selective Review to ensure that they are following certain FCC program rules. *See* http://www.universalservice.org/sl/applicants/step08/ (retrieved

subsequently denied Richmond County universal service funding stating that "FCC rules require that a contract for the products/services be signed and dated by both parties prior to filing the Form 471."[13] Richmond County subsequently filed the instant Requests for Review with the Commission.[14]

4. In its Requests for Review, Richmond County argues that it met the "spirit and the letter" of the Commission's rules concerning its contractual agreements with each of the three service providers.[15] Specifically, as it pertains to its contract with Novell, Inc., Richmond County's signature on the contract extension agreement was dated January 26, 2005, one day after the FCC Form 471 was certified.[16] Although Richmond County acknowledges that the date on the contract is later than the FCC Form 471 certification date, it claims that this was an inadvertent clerical error and its intention was to sign the contract on January 25, 2005, the date on which the FCC Form 471 was certified.[17] As it pertains to Richmond County's contract with Time Warner Cable, Richmond County submitted an unsigned and undated contract to USAC.[18] On appeal, however, the contract submitted by Richmond County to the Commission indicates that the parties signed the contract with Time Warner Cable, Inc. on January 13 and 14, 2005, prior to the FCC Form 471 certification date of January 27, 2005.[19] Lastly, as it pertains to Richmond County's contract with eChalk, LLC, while the agreement indicates February 1, 2005 as the "effective date" of the service order, more than one week prior to the FCC Form 471 certification date of February 10, 2005, it does not include dates accompanying the signatures.[20] Richmond County contends that the contract was signed on the service order's effective date of February 1, 2005 as the contract did not include a space for handwritten dates.[21]

5. *Waiver Standard.* The Commission may waive any provision of its rules on its own motion and for good cause shown.[22] A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.[23] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual

---

May 16, 2006). Specifically, the Selective Review follows up on certifications that applicants make on their Forms 471 about the competitive bidding process and the necessary resources to make effective use of requested services. http://www.universalservice.org/sl/applicants/step08/undergo-selective-review/default.aspx (retrieved May 16, 2006).

[13] *See* Funding Commitment Decision Letter.

[14] *See* Requests for Review.

[15] Requests for Review at 2.

[16] *See* Request for Review for File No. SLD-451211 at Attach. 1.

[17] Request for Review for File No. SLD-451211.

[18] *See* Letter from Suzanne W. Griffin, Richmond County School District, to Schools and Libraries Division, Universal Service Administrative Company, dated August 24, 2005, at attachment 5 (Selective Review Response).

[19] *See* Request for Review for File No. SLD-452514 at Attach. 1.

[20] *See* Request for Review for File No. SLD-464649 at Attach. 1.

[21] *Id.*

[22] 47 C.F.R. § 1.3.

[23] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

basis.[24] In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.[25]

III. DISCUSSION

6. We grant Richmond County's appeals of the decision by USAC to deny Richmond County's Funding Year 2005 application for discounted services under the E-rate program as they pertain to Richmond County's contracts with Time Warner Cable and eChalk, LLC.[26] Based on the evidence submitted upon appeal, we find that Richmond County had legally binding contracts with Time Warner Cable and eChalk, LLC in place when submitting its FCC Form 471s.[27] In both cases, Richmond County produced contracts that were signed and dated before the certification date of its FCC Form 471s.[28] While Richmond County does not offer an explanation for the difference in the contract with Time Warner Cable submitted to USAC and to the Commission, the record contains no information to cause us to question the authenticity of the contract attached to its appeal with the Commission.[29] We also have no reason to doubt that the contract with eChalk, LLC was signed as of the effective date of the agreement.[30]

7. Furthermore, as it concerns Richmond County's contract with Novell, Inc., we find good cause exists to waive section 54.504(c) of the Commission's rules, which states that an applicant for E-rate funding must have a legally binding contract in place upon submission of its FCC Form 471.[31] The record demonstrates that while Richmond County technically missed the program deadline for having a signed contract in place prior to submission of its FCC Form 471, Richmond County had a legally binding contract in place during Funding Year 2005 and before the vendor began providing services.[32] In fact, the agreement at issue was an extension of a pre-existing contractual arrangement between Richmond County and Novell, Inc.[33] Moreover, Richmond County's FCC Form 471 was certified only one day before the contract was awarded to Novell, Inc.[34] Because Richmond County had an explicit agreement with Novell, Inc. before submitting its FCC Form 471, we find that, in this case, the policy behind the rule was satisfied even if Richmond County did not technically meet the requirements of the rule.[35] Thus, we find that, for this applicant, denying its requests for funding would create undue hardship

---

[24] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

[25] *Northeast Cellular*, 897 F.2d at 1166.

[26] *See* Requests for Review.

[27] *See supra* para. 4.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] 47 C.F.R. § 54.504(c).

[32] *See* Request for Review for File No. SLD-451211 at attachment 1.

[33] *Id.*

[34] *See id.*; Richmond County FCC Form 471 for File No. SLD-451211.

[35] *See Requests for Waiver of the Decision of the Universal Service Administrator by the Illinois School for the Visually Impaired, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-419654, CC Docket No. 02-6, Order, DA 06-785, para. 7 (Wireline Comp. Bur. rel. April 3, 2006).

and prevent it from receiving E-rate funding. Finally, while the Commission's competitive bidding rules are a central tenet of the E-rate program, and a tool for preventing waste, fraud, and abuse, the record contains no evidence at this time that Richmond County engaged in activity intended to defraud or abuse the E-rate program.

8. Accordingly, we find that good cause exists to grant Richmond County a waiver of section 54.504(c) of the Commission's rules, and remand its appeals to USAC for further processing consistent with our decision. To ensure that its appeals are resolved expeditiously, we direct USAC to issue an award or denial based upon a complete review and analysis of the underlying applications no later than 60 days from the release of this Order.

9. We note, however, the limited nature of this decision. As stated above, our competitive bidding rules are necessary to ensure more efficient pricing for telecommunications and information services purchased by schools and libraries.[36] Although we grant Richmond County's appeals, our action here does not eliminate the requirement that applicants have a signed contract in place when submitting an FCC Form 471.[37] We continue to require E-rate applicants to submit complete and accurate contract information to USAC as part of the application review process.

10. Finally, we are committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, we reserve the right to conduct audits and investigations to determine compliance with the E-rate program rules and 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 processes. 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 Requests for Review filed by Richmond County School District ARE GRANTED.

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), that section 47. C.F.R. § 54.504(c) IS WAIVED.

13. 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

[36] *Supra* para. 7.

[37] *See* 47 C.F.R. § 54.504(c).

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 Requests for Review filed by Richmond County School District ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

14. 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 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau