

November 26, 2007

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: Comment on Request for Review of a Decision of the Universal
Service Administrator by the Mesorah School, CC Docket No. 02-6

Billed Entity Name	The Mesorah School
Billed Entity Number	197816
Funding Years	2007
471 Application Number	557561
Funding Request Number	153371

Comment

Earlier this month, the FCC received a Request for Review dated April 10th filed by the Mesorah School in Brooklyn, NY. The request deals with USAC's cost-effectiveness denial of funding for a video conferencing system.

E-Rate Central, in its role as a State E-Rate Coordinator under contract with the New York State Education Department, submits these comments to:

1. Support the Mesorah School's request for review; and
2. Encourage the Commission to address the broader issue of cost-effectiveness of equipment required by small schools as expressed as per-student costs.¹

¹ E-Rate Central also addressed this issue in an appeal dated February 9, 2007, on behalf of the White Plains Public School District. In this case, USAC had denied funding for a FY 2006 cabling project for the district New York Hospital Annex, a geographically dispersed campus facility requiring an extensive cabling infrastructure. As in the Mesorah School denial, USAC apparently did not find that costs were well above market, but rather that the cost per student exceeded some unspecified, ineffective, level. A copy of the White Plains appeal, which remains pending, is available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518725760.

The Mesorah School Appeal:

As the Mesorah School explained to both USAC and the FCC in its appeals, it had specific technical and education reasons for seeking funding for a video conferencing system for its students. The school provides education to special-needs children for whom the school planned to use the system to provide highly individualized, multi-sensory, instruction.

Although the USAC appeal denial includes language referencing the FCC's *Ysleta Order* (noting that "equipment prices two or three times greater than the prices available from commercial vendors would not be cost effective unless there was extenuating circumstances"), there was no indication in either of USAC's initial funding or appeal decisions that the actual price of the equipment proposed by the Mesorah School was deemed significantly higher priced than that of the same or similar products. Nor was there any indication that any portion of the equipment was deemed ineligible.

Instead, USAC's only quantitative concern appears to have been the cost per student of the equipment. As per its FY 2007 application, the Mesorah School had only 39 students. The pre-discount cost of the requested video conferencing equipment was \$82,400. Although this price does not appear unreasonable highly for the equipment itself, it equates to \$2,112.82 per student — apparently too high, in USAC's view, for the school's special-need students.

Broader Per-Student Cost-Effectiveness Issues:

The Mesorah School per-student cost-effectiveness denial is not unique. Recent FCC comments² filed by the E-Rate Service Providers Association ("ESPA") regarding USAC's administrative procedures notes that "...cost effective funding denial analysis results also indicates that USAC appears to be targeting small rural schools, private schools, and charter schools for these reviews" — all schools that tend to be smaller than average and which, everything else being equal, have mathematically higher costs per student.

In an earlier FCC filing³ on administrative procedures issues, the State E-Rate Coordinators' Alliance ("SECA") makes the similar comments noting that:

As implemented, USAC's cost-effectiveness procedures appear to go well beyond FCC rules and policy guidance. As of the FCC's *Third Report and Order and Second Further Notice of Proposed Rulemaking* (FCC 03-323), the Commission simply sought comment on whether it should codify additional rules on cost-effectiveness, and explicitly stated: "Nor do our rules expressly establish a bright line test for what is a 'cost effective' service."

Without public comment or discussion, USAC has apparently developed its own "bright line" tests both for products and services that appear to be entirely insensitive to local conditions (particularly for maintenance costs). Additionally, USAC appears to be basing certain denials on per student cost ratios which it deems too high, regardless of the actual costs of providing service.

By focusing on cost-effectiveness on a per-student basis, USAC is making policy decisions unsupported by Commission rules. Even worse, USAC is making educational policy decisions.

² See http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519894082.

³ See http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519810724.

It is one thing to tell a school that it is overpaying for its equipment, but quite another — and not USAC's role — to tell a school it is spending too much on its students' education.

Summary:

By this appeal, we ask the Commission to review and reverse the Administrator's decision on the referenced Mesorah School funding request. More broadly, we ask the Commission to clarify its cost-effectiveness rules with respect to the per-student costs required to provide necessary and effective E-rate eligible services to small schools and libraries.

Sincerely,



Winston E. Himsworth

In support of the Mesorah School