

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

In the Matter of:

)	
Request for Review of a decision)	
by the Schools and Libraries Division)	Administrator Correspondence Dated
for Thomasville City, Georgia)	November 16, 2009
Public Schools)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review or Waiver

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, now comes Thomasville City, Georgia public schools (Thomasville) before the Commission to appeal a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator) dated November 16, 2009. This appeal comes timely submitted within 60 days of the Administrator decision.

Requestor: Thomasville City Public Schools
Billed Entity Number: 127530
FCC Registration Number 0013076377
Funding Request Numbers: 1292320, 1292491
Form 471 Numbers: 469401

Background

In correspondence dated May 8, 2009, the Administrator adjusted the funding commitment for the above referenced FRN for failure to have a technology plan in place covering the entire fund year when posting the Form 470 for these services. The Commitment

Adjustment letter was generated as a result of a 2008 audit by KPMG of the Thomasville E-Rate applications. The final audit findings were dated February 18, 2008. Thomasville appealed the decision to the Administrator on July 6, 2009. In correspondence dated November 16, 2009 the Administrator partially approved the Thomasville appeal recognizing Thomasville had an approved technology plan through October 31, 2005. Specifically: “However, on appeal applicant provided an Technology Plan approval letter dated November 1, 2002 from the Georgia Department of Education, indicating that the plan expired on October 31, 2005. Although the FCC waived their rules in the Brownsville Independent School District decision, USAC does not have that authority.”¹ Consequently, eight months of funding remain subject to a Commitment Adjustment and request for return of funding by the Administrator.

Discussion

In this instance Thomasville believes the Administrator should have the authority to grant the entire appeal outright under Brownsville. Brownsville granted appeals of the underlying applicants and waiving the applicable Technology Plan Regulations for applicants and established prospective regulations governing the timing and duration of technology plans. Because the Commission granted the appeals and established clearer technology plan guidance in Brownsville, Thomasville believes the Administrator has the authority to grant similarly situated appeals that pre-date the Brownsville Order. Granting this authority to the Administrator would reduce the number of appeals before the Commission.

Alternatively, and in accordance with precedent in the Brownsville Order, Thomasville requests the Commission waive applicable Technology Plan Regulations for the eight months of

¹ Administrator Decision at 3.

funding for these FRN as outlined in the original Administrator appeal below. The facts show that Thomasville was covered by approved technology plans the entire year and the technology plan circumstances mirror those of several Brownsville applicants.

Respectfully submitted this second day of December, 2009,

//ss//

Dr. George H. Kornegay, Jr.
Assistant Superintendent
Administrative Services
Thomasville City Schools
915 E. Jackson Street
Thomasville, GA 31792

Filed by Greg Weisiger, Consultant to Thomasville

Text of Administrator Appeal, Attachments omitted:

Funding Request Numbers 1292320 and 1292491

The Administrator has adjusted the commitments for these FRN by \$189,093.69 and \$70,429.50 respectively. The sole reason for adjustment was that the auditor "...discovered that there was not a technology plan in place, that covered the funding year, for this entity at the time of posting the Form 470 for competitive bidding." Thomasville will show that the existing technology plan covered a portion of the fund year, was used as the basis for the new technology plan, and the new plan was approved prior to expiration of the existing plan. Thomasville complied with the letter and spirit of all E-Rate regulations.

Technology Planning Background

Technology planning has been an integral part of the E-Rate program since the inception of the program. While technology plans were required, the Commission was vague as to specific requirements and duration of plans until the Fifth Order on Reconsideration was issued on August 13, 2004.² The Fifth Order specified that plans must contain five required elements, plans must be approved prior to commencement of service, and the Administrator may review plans

² Fifth Order on Reconsideration CC Docket No. 02-6, Rel. August 13, 2004.

during the normal course of application review. The Fifth Order neglected to address a number of important technology planning issues.

As a result of numerous appeals to the Commission, on March 28, 2007 the Commission issued the Brownsville Independent School District Decision³ which clarified a number of ambiguous technology plan issues. Specifically, the Decision waived some technology planning requirements, granted appeals outright, required the Administrator to allow applicants to cure technology plan deficiencies when discovered – including outdated or expiring plans, and required the Administrator to “...develop additional outreach efforts to help applicants gain a better understanding of the technology plan requirements and avoid some of the mistakes presented here.”⁴

Discussion

The applications here under audit were Year 2005 applications. When filing the Thomasville Form 470 and Form 471, the Fifth Order had just recently been issued and the Administrator had not yet implemented sufficient outreach to adequately educate applicants. Because the applications were submitted prior to the Brownsville Decision, they should be governed in accordance with that decision. Specifically, if the auditor discovered a deficiency with the plan, Thomasville should have been given the opportunity to correct the deficiency.⁵

Further, the Brownsville Decision grants relief for the Thomasville plan issue in particular. At 13 the Decision states:

In some cases, when Petitioners filed FCC Form 470, they relied on technology plans from prior funding years that included the same services, but would expire during the application process or funding year. These Petitioners then obtained approval for new plans by the time they received discounted services. Therefore, they incorrectly assumed that they met the requirements in the Commission’s rules that they be “covered by ...technology plans for using the services requested in the [Form 470]” and that “their plan [be] approved before they began receiving services.” That is, they thought they could use two different plans to satisfy the technology plan requirements whereas the rules require applicants to develop a technology plan in advance of filing their FCC Form 470 and to obtain approval of *that same plan* prior to the commencement of service. We believe such an outreach program will increase awareness of the technology plan requirements and will assist applicants in complying with those requirements. We also believe that these changes will improve the overall efficacy of the E-rate program.

The Commission then instructed the Administrator to allow applicants to correct certain deficiencies: “...if an applicant responds to a request by USAC to provide technology plan documentation and the documentation provided by the applicant is deficient (*e.g.*, is outdated or will expire before the end of the relevant funding year), USAC shall: (1) inform the applicant

³ Brownsville Decision, FCC 07-37, Rel. March 28, 2007.

⁴ Brownsville Decision at 13.

⁵ Brownsville Decision at 12 and 13.

promptly in writing of any and all deficiencies, along with a clear and specific explanation of how the applicant can remedy those deficiencies; and (2) permit the applicant to submit correct documentation, if any, within 15 calendar days from the date of receipt of notice in writing by USAC. USAC shall apply this directive to all pending applications and appeals.”

Thomasville relied on the existing technology plan as the basis (draft) for the new technology plan. According to the Technology Plan Approval Letter from the Georgia Department of Education, the plan expired on October 31, 2005 – well into the fund year (Attachment A). Thomasville was actively reviewing and revising the plan prior to and subsequent to the filing of the Form 470 for Year 2005. Because of personal issues at the time of the audit, the Thomasville E-Rate coordinator overlooked some of the planning activities engaged prior to the filing of the Form 470.

Thomasville continued to work on the 2005-2006 technology plan and submitted it to the Georgia Department of Education for approval. In correspondence dated September 28, 2005 the Thomasville technology plan was approved through June 30, 2006 (Attachment B). Clearly, the entire fund year was covered by approved technology plans. The Brownsville Decision addressed this issue specifically in response to the Charlottesville, Virginia appeal. The Charlottesville situation was identical to the Thomasville appeal now before the Administrator. The Charlottesville appeal was remanded to the Administrator and subsequently funded.

Conclusion

Thomasville City Public Schools asks the Administrator to overturn the Commitment Adjustment Decision in light of the evidence presented and specific instructions in the Brownsville Decision. Thomasville had an approved technology plan that covered the entire Year 2005 fund year and had initiated steps to update the existing plan prior to filing the Form 470. Regardless, the Brownsville Decision provided the Administrator with specific instructions for curing technology plan issues similar to or identical to Thomasville.