

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

In the Matter of)	
)	
Request for Review of a Decision of the Universal Service Administrator by)	
)	
Harrisburg City School District)	File No. SLD-256221
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: December 30, 2016

Released: December 30, 2016

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. Consistent with precedent,¹ we deny the request filed by the Harrisburg City School District (Harrisburg CSD) seeking review of a decision of the Universal Service Administrative Company (USAC) seeking repayment from Harrisburg CSD of funding disbursed under the E-rate program (more formally known as the Schools and Libraries Universal Service Support Mechanism) for services never delivered to Harrisburg CSD. We find that USAC was correct in holding Harrisburg CSD and its service provider, EMO Communications, Inc. (EMO) jointly responsible for repayment, based on its undisputed finding that Harrisburg CSD’s Director of Information Technology accepted bribes from EMO’s President to falsely certify that equipment purchased with E-rate support had been delivered. We remand this case to USAC to calculate the proper recovery amount.

II. BACKGROUND

A. Legal Background

2. The E-rate program provides eligible schools, libraries, and consortia that include eligible schools and libraries funding for the purchase of telecommunications, telecommunications services, Internet access, internal connections, basic maintenance of internal connections, and managed internal broadband services.² To prevent waste, fraud, and abuse, E-rate program rules require that E-rate

¹ See, e.g., *Petition for Reconsideration of a Decision of the Wireline Competition Bureau by Lazo Technologies, Inc.*, CC Docket 02-6, Order on Reconsideration, 26 FCC Rcd 16661, 16663, para. 6 (2011) (*Lazo Technologies Order on Reconsideration*) (finding that the petitioners were not entitled to E-rate support when the applicant’s and service provider’s employees engaged in misconduct that tainted the contract for E-rate supported services and that the question of whether the petitioners had knowledge of, or involvement, in the misconduct is irrelevant to whether there was a violation of E-rate rules). See also *Request for Review or Waiver of a Decision of the Universal Service Administrator by RECtec Technology and Communications (Colcord Public Schools)*, CC Docket No. 02-6, Order, 29 FCC Rcd 8180, 8083-84, para. 11 (WCB 2014) (*RECtec Order*) (directing USAC to recover from the applicant and service provider because both violated E-rate program rules).

² 47 C.F.R. § 54.502(a).

supported equipment and services be installed or delivered³ and, prior to E-rate funds being disbursed, E-rate applicants must complete certifications attesting that services have been or will be delivered.⁴

3. When USAC determines, as it did here, that E-rate funding has been improperly disbursed and should be recovered, USAC must, pursuant to the *Schools and Libraries Fourth Report and Order*, consider which party was in a better position to prevent a violation of E-rate program rules, and which party committed the act or omission that forms that basis for the violation.⁵ For some rule violations, the beneficiary and service provider may share responsibility.⁶

B. Factual Background

4. On April 19, 2002, USAC issued a Funding Commitment Decision Letter (FCDL) providing a funding commitment for the services provided by EMO to Harrisburg CSD.⁷ On May 30, 2002, John Weaver, Harrisburg CSD's Director of Information Technology, completed an FCC Form 486 and certified in it that the services "have been, are planned to be, or are being provided."⁸ Ronald Morrett, Jr., EMO's President, submitted invoices for the services on behalf of EMO on October 30, 2002 and January 23, 2003.⁹ In fact, EMO did not provide the E-rate supported services and equipment to Harrisburg CSD. Instead, Morrett paid Weaver to falsely certify that EMO had delivered E-rate supported equipment and services to Harrisburg CSD.¹⁰

5. When Harrisburg CSD officials other than Weaver found out that the school district had not received services for which it had been invoiced, they contacted the Harrisburg police, who contacted the Federal Bureau of Investigation. The school district suspended Weaver,¹¹ and he resigned soon after his suspension.¹² On or shortly after the day the charges against Morrett and Weaver were announced in

³ See *Request for Review of a Decision of the Universal Service Administrator by Sprint-Florida, Inc., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 14998, 15000, para. 7 (WCB 2012) (*Sprint-Florida Order*) (recovering funding after finding that E-rate supported equipment was not installed); *Request for Waiver or Review of a Decision of the Universal Service Administrator by Premio Computer, Inc. (Los Angeles Unified School District)*, CC Docket No. 02-6, Order, 29 FCC Rcd 8185, 8186, para. 5 (WCB 2014) (*Premio Order*) (finding that E-rate funds should not have supported equipment that was never delivered).

⁴ Applicants submit an FCC Form 486 (Receipt of Service Confirmation) to USAC certifying that the service have begun or will begin and specifying the service start date before USAC issues disbursements for discounts on eligible services. See *Requests for Waiver of Decisions of the Universal Service Administrator by Archdiocese of New Orleans et al.*, CC Docket No. 02-6, Order, DA 16-1205, 2016 WL 6138181, para. 2 (WCB Oct. 20, 2016).

⁵ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, para. 15 (2004) (*Schools and Libraries Fourth Report and Order*).

⁶ See *id.*

⁷ See Letter from USAC, Schools and Libraries Division, to John Weaver, Harrisburg City School District (dated Apr. 19, 2002) (Funding Commitment Decision Letter).

⁸ See FCC Form 486, Harrisburg City School District (May 30, 2002).

⁹ See FCC Form 474, EMO Communications, Inc. (dated Oct. 30, 2002); FCC Form 474, EMO Communications, Inc. (Jan. 23, 2003).

¹⁰ *Information, U.S. v. Morrett and Weaver*, case no. 013-CR-337 (filed Dec. 9, 2003); Judgment in a Criminal Case, *U.S. v. Morrett*, case no. 03-CR-337-01 (filed May 16, 2005) (Morrett Judgment); Judgment in a Criminal Case, *U.S. v. Weaver*, case no. 03-CR-337-02 (filed Mar. 1, 2005) (Weaver Judgment).

¹¹ See Letter from Julie Botel, Deputy Superintendent, Harrisburg School District, to John Weaver (dated June 4, 2003).

¹² See Letter from John Weaver to William Gretton, Business Administrator, Harrisburg School District (dated June 19, 2003).

December 2003, Harrisburg CSD contacted USAC to inform USAC about the bribery charges and outline the school district's cooperation with local and federal enforcement agencies.¹³ USAC conducted a site visit in February 2005, and concluded that it had improperly disbursed a total of \$5,050,431 to EMO for installation, upgrade, and maintenance services that had not been delivered, which is the amount at issue in this appeal.¹⁴

6. Weaver and Morrett pled guilty in the criminal cases filed against them. Weaver was sentenced to two years in prison and ordered to pay \$1,977,516 in restitution to USAC. Morrett was sentenced to three years in prison and ordered to pay the same amount in restitution jointly and severally with Weaver.¹⁵ A third conspirator who helped Weaver launder money, Mark Leshner, pled guilty to conspiracy to engage in financial transactions with the proceeds of a bribery scheme and was ordered to pay an additional \$187,440 in restitution to USAC, which brought the total amount of restitution ordered to \$2,164,956.¹⁶

7. USAC issued a Notification of Improperly Disbursed Funds Letter to Harrisburg and EMO seeking to recover \$2,885,475 (the \$5,050,431 that was wrongly disbursed minus the \$2,164,956 that was ordered to be paid in restitution) jointly and severally from Harrisburg CSD and EMO for equipment and services consisting of installation, upgrades, and maintenance services that was never provided.¹⁷ Harrisburg CSD appealed that decision to USAC,¹⁸ and USAC denied the appeal.¹⁹ Harrisburg CSD filed the instant appeal with the Commission.²⁰

III. DISCUSSION

8. After reviewing the issues *de novo*,²¹ we deny Harrisburg CSD's request for review. As described above, the facts are not in dispute: in exchange for bribes from EMO, Harrisburg CSD's Director of Information Technology falsely certified that EMO had provided or was providing equipment and services to Harrisburg CSD. As a result, USAC disbursed \$5,050,431 in E-rate support for equipment and services that were never provided.

9. There is no dispute about the rule violation at issue. Our rules require that E-rate supported equipment and services be delivered and installed.²² Our rules, therefore, were clearly violated.

¹³ See Letter from William Gretton, Business Administrator, Harrisburg School District, to George McDonald, Schools and Libraries Division, USAC (dated March 29, 2004) (outlining the steps that Harrisburg CSD took after it became aware of the bribery scheme).

¹⁴ See Schools and Libraries Investigative Report, Harrisburg City School District, USAC Audit No. SL2005IV001 (dated Mar. 10, 2005).

¹⁵ See Morrett Judgment.

¹⁶ See Judgment in a Criminal Case, U.S. v. Leshner, case no. 04-CR-0321 (filed Apr. 2, 2005).

¹⁷ See Letter from Schools and Libraries Division, USAC, to John Weaver, Harrisburg City School District (dated Sept. 20, 2007) (Notification of Improperly Disbursed Funds Letter).

¹⁸ See Letter from John T. Nakahata, Counsel for Harrisburg CSD, to Schools and Libraries Division, USAC (dated Nov. 19, 2007) (Appeal to USAC).

¹⁹ Letter from Schools and Libraries Division, USAC, to John T. Nakahata, Counsel for Harrisburg CSD (dated Mar. 3, 2009) (Administrator's Decision on Appeal).

²⁰ Letter from John T. Nakahata, Counsel for Harrisburg CSD, to Marlene H. Dortch, Secretary, FCC (dated Nov. 19, 2007) (Appeal to Commission).

²¹ See 47 C.F.R. § 54.723(a) ("The Wireline Competition Bureau shall conduct *de novo* review of requests for review of decisions issued by the Administrator.")

²² See, e.g., *Sprint-Florida Order*, 27 FCC Rcd 14998 (seeking recovery when a service provider received E-rate funding for services that had not been installed and had not reimbursed USAC); *RECTec Order*, 29 FCC Rcd 8180

(continued....)

Harrisburg CSD argues that USAC should recover only from EMO because EMO was in a better position to prevent the rule violation, that Harrisburg CSD should not be liable for Weaver's actions under several common-law vicarious liability principles, and that it would be unjust to collect from the district when USAC could have sought full restitution from the criminal defendants.

10. Based on Commission precedent, we find that USAC properly sought recovery from Harrisburg CSD and EMO because Harrisburg CSD falsely certified that services had been delivered and EMO submitted invoices for those services even though they had not been delivered. In determining which party or parties to hold responsible for violations of E-rate rules, the Commission has directed USAC to determine in the first instance which party was in the better position to have prevented the violation and which party committed the act or omission that forms the basis of the violation.²³ While the *Schools and Libraries Fourth Report and Order* states that “the service provider is likely to be the entity that fails to deliver supported services,” it also finds that, “in some instances, both the beneficiary and the service provider may share responsibility for a statutory or rule violation” and that USAC should recover from both parties in that situation.²⁴ This appeal presents one of the instances in which USAC should recover from both parties for a failure to deliver services because both parties contributed to the failure to deliver equipment. EMO did not deliver the E-rate supported services and submitted deceptive invoices to USAC. Harrisburg CSD also played a significant role in the rule violations because its Director of Information Technology falsely certified that EMO delivered the services and equipment.

11. In the orders addressing recovery for funding disbursed as a result of a program rule violation, the Commission makes clear that applicants and service providers are the entities from which USAC may recover.²⁵ Although the record contains no evidence that other officials at Harrisburg CSD were aware of Weaver's criminal conduct or sanctioned it, this fact does not excuse the district from returning the wrongfully-disbursed funds. At all times relevant to this appeal, Weaver was an official of Harrisburg CSD and was acting in that capacity when he violated program rules.

12. The Commission has a duty to protect the Universal Service Fund (Fund) against waste, fraud, and abuse, and such a duty requires us to seek recovery where, as in this case, the beneficiary bears the responsibility for a rule or statutory violation.²⁶ The Commission designed the E-rate program to include incentives to encourage applicants to comply with program rules and has stated that there should

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(WCB 2014) (denying appeal when the service provider submitted deceptive invoices and the applicant falsely certified that services had been delivered when the approved services had not been delivered); *Premio Order*, 29 FCC Rcd 8185 (denying appeal because service provider improperly received support for equipment that it never delivered).

²³ See *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15257, para. 15.

²⁴ See *id.*

²⁵ See *Changes to the Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, 17 Communications Reg. (P&F) 1192, 1194, para. 8 (1999) (directing USAC to seek recovery from the service provider for funding that was disbursed as a result of a program rule violation); *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15256-18, para. 10-17 (determining that recovery actions can be directed against E-rate applicants in addition to service providers and consistently referring to recovery being against a “school or library” or “service provider” and never discussing recovery against individuals).

²⁶ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11319, para. 46 (2013) (“the Commission and USAC have a duty to protect against waste, fraud and abuse in the program”); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15819, para. 33 (2004) (referring to the Commission's fiduciary duty to protect the Fund against waste, fraud, and abuse).

be financial consequences for rule violations.²⁷ Applicants' supervision and internal review systems help to prevent a single actor from defrauding the Fund and the applicant. Not recovering from Harrisburg CSD because other officials were unaware of his criminal conduct would discourage E-rate applicants from creating internal review systems necessary to prevent waste, fraud, and abuse.²⁸

13. Weaver and Morrett were authorized to conduct E-rate business on behalf of Harrisburg CSD and EMO, respectively. While acting in those capacities, their actions caused Harrisburg CSD and EMO to violate E-rate program rules. Harrisburg CSD's arguments that it cannot be liable for the rule violations under common law principles such as negligent supervision, *respondeat superior*, and apparent agency are misplaced. Commission precedent makes clear that E-rate applicants are liable for violations of our rules when the employee that committed the rule violation was authorized to conduct E-rate business on the applicant's behalf.²⁹ We recognize that USAC's Administrator's Decision on Appeal stated that Harrisburg CSD is vicariously liable for Weaver's actions without addressing the question of whether common law agency principles are germane to recovery for violations of E-rate rules.³⁰ We consider appeals under a *de novo* standard of review, and although USAC may have incorrectly based its reasoning on vicarious liability, we find the end result is correct.³¹

14. Finally, we note that USAC's recovery of less than the entire wrongfully-disbursed amount in restitution does not preclude it from recovering via administrative procedures. Harrisburg CSD argues that it would be unjust to collect from the district when USAC could have sought full restitution from the criminal defendants. E-rate program rules require USAC to recover the full amount of funding that was disbursed in violation of a program rule.³² In fact, in this case, USAC has sought to recover less money than it should have. USAC's Notification of Improperly Disbursed Funds Letter recognizes that a total of \$5,050,431 was improperly disbursed, but that specified that it was only seeking to recover \$2,885,475 because the court in Weaver and Morrett's criminal case ordered them to pay \$2,164,956 in restitution to USAC. That would have been the proper recovery amount if Weaver and Morrett complied with the court's order to pay \$2,164,956. The record, however, shows that the full amount of restitution has not been paid.³³ Therefore, we remand this case to USAC to determine the full amount of restitution that has been paid and to recover the difference between the improperly disbursed amount and the amount of restitution paid jointly and severally from Harrisburg CSD and EMO.

²⁷ See *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15256, para. 13 ("directing recovery actions to beneficiaries in those situations where the beneficiary bears responsibility for the rule or statutory violation will promote greater accountability and care on the part of such beneficiaries").

²⁸ Contrary to Harrisburg CSD's assertion, USAC has the authority to collect this claim. Section 1.1902(c) of the Commission's rules requires claims in which there is an indication of fraud to be referred to the Department of Justice and states that DOJ may return the claim at its discretion. See 47 CFR § 1.1902(c). This claim is based on an E-rate program rule violation—the failure to provide services or equipment for which payment was made—and is not, as Harrisburg CSD seems to be asserting, a civil or criminal fraud claim over which only DOJ has jurisdiction. In any event, at the Commission's request, DOJ expressly confirmed that the Commission has authority to pursue this claim.

²⁹ See *Lazo Technologies Order on Reconsideration*, 26 FCC Rcd at 16663-64, paras. 6-7 ("Whether Petitioners had actual knowledge of, or involvement in, the misconduct is unknown. However, we agree with the Bureau that Petitioners' alleged lack of knowledge or involvement in the misconduct between MSE and the DISD is not relevant to whether USAC correctly denied funding for work performed under the DISD contract.")

³⁰ See Letter from USAC, Schools and Libraries Division, to John T. Nakahata, Counsel for Harrisburg CSD (dated Mar. 3, 2009) (Administrator's Decision on Appeal).

³¹ 47 C.F.R. § 54.723(a)

³² See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15815, para. 20 (2004).

³³ The record shows that only \$784,338 has been paid to date.

15. ACCORDINGLY, IT IS ORDERED, 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 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), the Requests for Review filed by the petitioner listed is DENIED, and the underlying application IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau