

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review or Waiver of Decisions of
the Universal Service Administrator by
Brownsville Independent School District
Brownsville, TX, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-482620, et al.
CC Docket No. 02-6

ORDER

Adopted: March 22, 2007

Released: March 28, 2007

By the Commission: Commissioner McDowell issuing a statement.

I. INTRODUCTION

1. In this Order, we grant appeals by 32 schools and libraries (collectively, Petitioners) of decisions by the Universal Service Administrative Company (USAC) that reduced or denied them funding from the schools and libraries universal service support mechanism (also known as the E-rate program). Specifically, we waive, in part, our technology plan rules and remand the underlying applications to USAC for further consideration consistent with this Order. To ensure that the remanded applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendix, and issue an award or a denial based on a complete review and analysis, no later than 90 calendar days from release of this Order. In addition, beginning with applications for Funding Year 2007, we direct USAC to enhance its outreach efforts as described herein to better inform applicants of the technology plan requirements and to provide applicants with a 15-day opportunity to provide correct technology plan documentation.

1Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). In this Order, we use the term “appeals” to refer generically to the requests for review or waiver listed in the Appendix.

USAC determined that Petitioners’ funding requests were not supported by an approved technology plan. In three instances, USAC granted the Petitioner’s funding request but then cancelled the Petitioner’s FCC Form 486 because USAC later determined that the funding requests were not supported by an approved technology plan. Therefore, unlike the other Petitioners, these Petitioners request review of USAC’s decision to cancel their FCC Forms 486. See generally Request for Review of SEED Public Charter School; Request for Review of St. Mary’s Public Library; Request for Review of The Pennsylvania School for the Deaf. In addition, one Petitioner, Kimball Public Library, whose funding request has not yet been denied, requests a waiver of the requirement that it file a technology plan. See generally Request for Waiver of Kimball Public Library.

2USAC shall apply this directive to all pending applications and appeals as well.

2. As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated,³ resulting in their applications for E-rate support being denied because of simple mistakes. We find that the actions we take here will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries obtain access to discounted telecommunications and information services.⁴

3. In particular, to prevent some of the recurring mistakes related to the technology plan requirements while we consider additional steps to improve the E-rate program,⁵ we direct USAC to enhance its outreach efforts as described herein. Requiring USAC to take these additional steps will not reduce or eliminate any application review procedures or program requirements that applicants must comply with to receive funding. Indeed, we remain committed to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and takes steps to educate applicants in a manner that fosters lawful program participation. We also emphasize that the actions taken in this Order should have minimal effect on the overall federal universal service fund (USF or Fund), because the monies needed to fund these appeals have already been collected and held in reserve.⁶

II. BACKGROUND

4. The E-rate program permits eligible schools, libraries, and consortia that include eligible schools and libraries to apply for funding in the form of discounts on eligible telecommunications services, Internet access, and internal connections.⁷ The Commission requires participating schools and libraries to base their requests for discounts on an approved technology plan,⁸ unless they are seeking discounts on “basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.”⁹

³*Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*). See also *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*; *Federal-State Joint Board on Universal Service*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*); *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, et al.*; *Federal-State Joint Board on Universal Service*, File Nos. SLD-418938, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5348 (2006).

⁴47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

⁵*Comprehensive Review NPRM*, 20 FCC Rcd at 11324-25, paras. 37-40 (seeking comment on the application process and competitive bidding requirements for the schools and libraries program).

⁶See *infra* n.34.

⁷47 C.F.R. §§ 54.501-54.503.

⁸*Id.* §§ 54.504(b)(2)(iii)-(iv), 54.508; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9077, para. 572 (1997) (*Universal Service Order*) (subsequent history omitted).

⁹47 C.F.R. § 54.504(b)(2)(iv); Universal Service Administrative Company, Eligible Services List, http://www.universalservice.org/_res/documents/sl/pdf/els_archive/2006-eligible-services-list.pdf (dated Nov. 18, 2005) (*2006 Eligible Services List*) (“If submitting [an] application ONLY for single line voice services (Local, Cellular/PCS, and/or long distance telephone service), applicants are not required to develop a Technology Plan. Applicants applying for other products or services, including PBX, key system, Centrex system, or similar technology are required to develop a Technology Plan.”); see also *Request for Review of the Decision of the*

Specifically, to ensure that applicants make appropriate decisions regarding the services for which they seek discounts, applicants must develop a technology plan prior to requesting bids on services through the filing of an FCC Form 470.¹⁰ In addition, to ensure that the plans are based on the reasonable needs and resources of the applicants and are consistent with the goals of the program, the technology plans must be independently approved by a state agency or other specified entity.¹¹ Applicants whose technology plans have not been approved when they file FCC Form 470 must certify that they understand their technology plans must be approved prior to the commencement of service.¹² They also must confirm, in FCC Form 486, that their plan was approved before they began receiving services.¹³

5. Petitioners request review of USAC's decisions to reduce or deny them funding because their applications were not supported by an approved technology plan, as required by the Commission's rules.¹⁴

III. DISCUSSION

6. In this item, we grant Petitioners' requests for review and we waive, in part, the Commission's technology plan rules.¹⁵ We therefore remand the underlying applications to USAC for further consideration consistent with this Order. In remanding Petitioners' underlying applications to USAC, we make no finding as to the sufficiency of any technology plan documentation and we make no finding as to the ultimate eligibility of the requested services.

7. Petitioners' requests for funding from the E-rate program were denied because USAC determined that the funding requests were not supported by an approved technology plan. In some cases, Petitioners did not develop a technology plan because they sought discounts only for telecommunications

Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 18812, 18816, para. 11 (Com. Carr. Bur. 2001).

¹⁰47 C.F.R. § 54.504(b)(2)(iii).

¹¹*Id.* § 54.508(d); *Universal Service Order*, 12 FCC at 9078, para. 574. See also *Universal Service Administrative Company, Technology Plans*, <http://www.universalservice.org/sl/applicants/step02/> (last modified Nov. 1, 2006).

¹²47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), 54.508(c); see also *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15826-30, para. 56 (2004) (*Fifth Report and Order*). Applicants whose technology plans have not been approved when they file FCC Form 471 must once again certify that they understand their technology plans must be approved prior to the commencement of service. 47 C.F.R. §§ 54.504(c)(1)(iv)-(v).

¹³47 C.F.R. § 54.508(c).

¹⁴See *supra* n.1.

¹⁵See 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v), 54.508(c)-(d). The Commission may waive any provision of its rules on its own motion for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *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). 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. *Northeast Cellular*, 897 F.2d at 1166.

services,¹⁶ or because they believed that a technology plan was not required for basic voice service provided over an ISDN/PRI line, a PBX system, or other similar technology.¹⁷ In other instances, Petitioners failed to show, in response to initial inquiries by USAC staff, that they had an approved technology plan in place for the relevant funding year, or that the plan was in the process of being approved.¹⁸ For example, some Petitioners had an approved technology plan in place for the relevant funding year, but provided an approval letter instead of the underlying plan,¹⁹ provided incorrect information about the date on which the technology plan was created,²⁰ had the wrong entity approve the technology plan,²¹ or were unaware that the technology plan already existed.²² Other Petitioners based

¹⁶See generally Request for Review of Dickens Public Library. Dickens Public Library requested discounts only on telecommunications services but mistakenly attached documentation from a different funding request suggesting that it might be seeking discounts on Internet access services as well. *Id.*

¹⁷See generally Request for Review of Pierson Library; Request for Review of Marathon County Public Library; Request for Review of Coldwater Library; Request for Waiver of Kimball Public Library; Request for Review of The Pennsylvania School for the Deaf. We note that, until October 2003, the Eligible Services List did not specify that voice services provided via PBX or similar technology required a technology plan. See Universal Service Administrative Company, Eligible Services List – Archived Versions, <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx> (last modified Apr. 12, 2006). Moreover, the Eligible Services List has not, and does not, specifically state that applicants who receive voice service via ISDN/PRI or CentraNet are required to develop a technology plan, which may be confusing to some applicants. *Id.*; see also *2006 Eligible Services List*. Elbert County School District argues, in part, that it should not be required to submit a technology plan for Centrex services because Centrex was the most cost-effective way to obtain service. See generally Request for Review of Elbert County School District. Although applicants applying for Centrex service are required to develop a technology plan that reflects the service, we find that there is good cause to waive that requirement here. There is no evidence in the record that Elbert County School District intended to circumvent the technology plan requirements when it purchased Centrex service as a cost-saving measure.

¹⁸See generally Request for Review of School Administrative District 29; Request for Review of InterTechnologies Group; Request for Review of South Boardman Elementary School; Request for Review of Mark Twain Union Elementary School District; Request for Review of Norfolk Country Agricultural High School; Request for Review of Hancock County Public Library; Request for Review of Socorro Consolidated School District; Request for Review of Cleveland Country Memorial Library; Request for Review of Charlottesville City Schools; Request for Review of Wisconsin Rapids Area School District; Request for Review of SEED Public Charter School; Request for Review of Milford E. Barnes Jr. School; Request for Review of Dedham Public Schools; Request for Review of Jacksboro Independent School District; Request for Review of Maternity B.V.M. School; Request for Review of Elbert County School District; Request for Review of Our Lady of Grace School; Request for Review of Brownsville Independent School District; Request for Review of St. Malachy School; Request for Review of St. Mary Star of the Sea School; Request for Review of St. Paul – Our Lady of Vilna School; Request for Review of Urban Day School; Request for Review of Granite School District; Request for Review of Marion County School District Seven; Request for Review of St. Mary's Public Library; Request for Review of The Pennsylvania School of the Deaf; Request for Review of Huntingdon Special School District.

¹⁹See Request for Review of Dedham Public Schools at 3.

²⁰See Request for Review of St. Mary's Public Library at 2; Request for Review of Huntingdon Special School District at 2.

²¹See Request for Review of The Pennsylvania School of the Deaf at 1. Although The Pennsylvania School for the Deaf should have used an SLD-certified technology plan approver to approve its technology plan instead of relying on approval by the school's board, we find good cause to waive the requirement here. The Pennsylvania School of the Deaf misunderstood which entity should approve its technology plan given that it is neither a public school nor a private school but rather a school established by the Pennsylvania Constitution and chartered by the Commonwealth. See Letter from Philip A. Shalanca and Franklin D. Franus, The Pennsylvania School of the Deaf, to Schools and Libraries Division, USAC (dated Nov. 6, 2006). There is no evidence in the record that The Pennsylvania School of the Deaf intended to circumvent the technology plan approval requirements.

²²See, e.g., Request for Review of Hancock County Public Library.

their applications on approved technology plans from prior years while they updated those plans and obtained approval consistent with state timeframes and procedures.²³ Subsequently, these Petitioners confirmed that they had an approved technology plan in place for the relevant funding year when they responded to subsequent inquiries by USAC staff, when they appealed the funding decisions with USAC, or when they appealed the funding decisions with the Commission.²⁴

8. Based on the facts and the circumstances of these funding applications, we conclude that there is good cause to waive the applicable technology plan rules and to grant Petitioners' requests for review. As noted above, several Petitioners committed clerical or ministerial errors, such as providing the wrong technology plan documentation.²⁵ As we noted in the *Bishop Perry Order*, we do not believe that such minor mistakes warrant the rejection of these Petitioners' E-rate applications, especially given the requirements of the program and the thousands of applications filed each year.²⁶ Additional Petitioners missed deadlines for developing or obtaining approval of their technology plans.²⁷ USAC denied their applications not because the applicants refused to develop or obtain approval of their technology plans, but because Petitioners failed to show that they had met the deadlines when USAC requested technology plan documentation. Indeed, many Petitioners thought they had complied with the deadlines and provided copies of their technology plans or approval letters when they responded to subsequent inquiries by USAC staff, when they appealed the funding decisions with USAC, or when they appealed the funding decisions with the Commission. We find that, given that these violations are procedural, not substantive, rejection of these Petitioners' E-rate applications is not warranted.²⁸

9. Still other Petitioners did not understand which telecommunications services are considered non-basic and therefore require a technology plan.²⁹ We find that these Petitioners have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest by denying their funding requests under those circumstances.³⁰

²³See, e.g., Request for Review of Cleveland County Memorial Library.

²⁴See *supra* n.18. With respect to Socorro Consolidated School District, we note that the version of the approved technology plan that is included in the record covers only the first six months of the relevant funding year. See *generally* Request for Review of Socorro Consolidated School District. However, we find that the District's request was based on a previously approved technology plan. We further note that Jacksboro Independent School District now argues that it was not required to complete a technology plan for local and long distance voice services provided over a T-1 line. See *generally* Request for Review of Jacksboro Independent School District. Because local and long distance voice services provided over a T-1 line are not basic services, a technology plan is required. See *supra* n.9. Nonetheless, we grant the District's Request for Review and waive our technology plan rules because we find that its request was based on a previously approved technology plan and that it had an approved technology plan in place prior to the commencement of service. See *generally* Request for Review of Jacksboro Independent School District. Finally, we note that Marion County School District Seven now argues that a technology plan was not required. See *generally* Request for Review of Marion County School District Seven. Based on the record evidence, it appears that the District was, in fact, required to develop a technology plan. However, it also appears that Marion County School District Seven had a technology plan in place for part of the funding year and updated that plan and obtained approval consistent with state timeframes and procedures. See Letter of Appeal from Everette M. Dean, Jr. Ed.D., Superintendent, Marion County School District Seven, to Schools and Libraries Division, USAC (dated Apr. 20, 2006).

²⁵See *supra* para. 7.

²⁶*Bishop Perry Order*, 21 FCC Rcd at 5321, para. 11.

²⁷See *supra* para. 7.

²⁸*Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

²⁹See *supra* para. 7.

³⁰See 47 U.S.C. § 254(h).

As the Commission previously noted, many E-rate applications are prepared by school administrators, technology coordinators, teachers and librarians—workers whose primary role in the school or library may be unrelated to applying for federal universal service funds, especially in small school districts or libraries.³¹

10. We also find that denying Petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from potentially receiving funding that they truly need to bring advanced telecommunications and information services their students and patrons.³² By contrast, waiving the applicable technology plan rules for these Petitioners and granting these requests will serve the public interest by preserving and advancing universal service.³³ Although the technology plan requirements are necessary to guard against the waste of program funds, there is no evidence in the record that Petitioners engaged in activity to defraud or abuse the E-rate program. We further note that granting these requests should have minimal effect on the Fund as a whole.³⁴ Therefore, we remand the appeals to USAC for further consideration consistent with this Order.³⁵

11. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order. If, on remand, USAC determines that it needs additional information to process the applications, such as a technology plan or approval letter, USAC shall permit Petitioners to provide the information within 15 calendar days of receiving notice in writing from USAC that additional information is required.³⁶

12. *Additional Processing Directives for USAC.* Beginning with applications for Funding Year 2007, 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 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

³¹*Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

³²Dickens Public Library, for instance, states that it is a one-staff library open less than 20 hours a week in a town with a population of 202. Request for Review of Dickens Public Library at 1. Similarly, Socorro Consolidated Schools notes that it is located in the second poorest county in the second poorest state in the country. Request for Review of Socorro Consolidated Schools at 2.

³³47 U.S.C. § 254(b).

³⁴We estimate that these requests for review involve applications for approximately \$2,703,000 in funding for Funding Years 2001-2006. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007 (Jan. 31, 2007). Thus, we determine that the action we take today should have minimal effect on the Universal Service Fund as a whole.

³⁵With respect to SEED Public Charter School, we note that USAC cancelled funding because SEED Public Charter School did not use an SLD-certified approver and did not provide a Letter of Approval signed by the SLD-certified approver. However, SEED Public Charter School has demonstrated that it provided the signed Letter of Approval to USAC in a timely manner. See Request for Review of SEED Public Charter School at Exhibit 7. In addition, SEED Public Charter School has demonstrated that the entity that approved its technology plan, DC Public Charter School Board, has been an SLD-certified technology plan approver for public charter schools including SEED Public Charter School since December 12, 2000. *Id.* at Exhibit 5.

³⁶Petitioners will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall, however, continue to work beyond the 15 days with Petitioners attempting in good faith to provide such additional information.

from the date of receipt of notice in writing by USAC.³⁷ USAC shall apply this directive to all pending applications and appeals.³⁸ The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should provide sufficient time to correct truly unintentional errors.³⁹ The opportunity for applicants to submit technology plan information that cures minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding. As a result, universal service support will be received by schools and libraries in which it will have the greatest impact for the most students and patrons. Furthermore, the opportunity to provide correct technology plan documentation will improve the efficiency of the E-rate program. If USAC helps applicants provide correct technology plan documentation initially, USAC should be able to reduce the money it spends on administering the fund because fewer appeals will be filed protesting the denial of funding for these types of issues. Therefore, we believe this additional opportunity to cure inadvertent errors in the technology plan documentation submitted will improve the administration of the Fund and reduce the occurrence of circumstances justifying waivers such as those granted above.

13. To complement this effort, USAC shall develop additional outreach efforts to help applicants gain a better understanding of the technology plan requirements and avoid some of the mistakes presented here. Specifically, USAC shall update the information on its website concerning technology plans to clarify that the technology plan that the applicant must develop by the time it files its FCC Form 470 is the technology plan for the *upcoming* funding year(s). 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.⁴⁰ These Petitioners then obtained approval for new plans by the time they received discounted services.⁴¹ 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]"⁴² and that "their plan [be] approved before they began receiving services."⁴³ 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.

³⁷Applicants will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall, however, continue to work beyond the 15 days with applicants attempting in good faith to provide documentation.

³⁸This includes all FY 2006 applications for which USAC has completed its review.

³⁹We note that applicants will retain the ability to appeal decisions denying funding requests on other grounds. *See* 47 C.F.R. § 54.719(c).

⁴⁰*See, e.g.,* Request for Review of Cleveland County Memorial Library.

⁴¹*Id.*

⁴²47 C.F.R. § 54.504(b)(2)(iii).

⁴³*Id.* § 54.508(d). In the *Fifth Report and Order*, the Commission revised its rules to permit applicants to obtain approval of their technology plans prior to receiving service instead of prior to filing their FCC Forms 470. However, the Commission made clear that "applicants still are expected to develop a technology plan prior to requesting bids on services in FCC Form 470; all that we are deferring is the timing of the approval of such plan by the state or other approved certifying body." *See Fifth Report and Order*, 19 FCC Rcd 15808, 15826-30, para. 56.

14. In addition, we note that, in the *Comprehensive Review NPRM*, we started a proceeding to address the concerns raised herein by, among other things, improving the application and disbursement process for the E-rate program.⁴⁴ Although we expect that the additional direction we have provided in this Order will help ensure that eligible schools and libraries can more effectively navigate the technology plan requirements, this action does not obviate the need to take steps to reform and improve the program based on the record in the *Comprehensive Review* proceeding.

15. We emphasize the limited nature of this decision. Although we base our decision to grant these requests in part on the fact that many of the rules at issue here are procedural, such a decision is in the context of the purposes of section 254 and cannot necessarily be applied generally to other Commission rules that are procedural in nature. Specifically, section 254 directs the Commission to “enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries.”⁴⁵ Moreover, this Order does not alter the obligation of participants in the E-rate program to comply with the Commission’s rules on technology plans or our other rules, which are vital to the efficient operation of the E-rate program.⁴⁶ We continue to require E-rate applicants to submit complete and accurate information to USAC in a timely fashion as part of the application review process. The direction we provide USAC will not lessen or preclude any application review procedures of USAC. All existing E-rate program rules and requirements will continue to apply, including the existing forms and documentation, USAC’s Program Integrity Assurance review procedures, and other processes designed to ensure applicants meet the applicable program requirements.

16. 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, this action in no way affects the authority of the Commission or USAC to conduct audits and investigations to determine compliance with 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 the Commission’s procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

17. 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, that the Requests for Review or Waiver filed by the Petitioners as listed in the Appendix ARE GRANTED to the extent provided herein.

18. IT IS FURTHER 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 pursuant to section

⁴⁴*Comprehensive Review NPRM*, 20 FCC Rcd at 11324-25, paras. 37-40.

⁴⁵See 47 U.S.C. § 254(h).

⁴⁶See 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v), 54.508; *Fifth Report and Order*, 19 FCC Rcd 15808, 15826-30, para. 56.

1.3 of the Commission's rules, 47 C.F.R. § 1.3, that sections 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(c)-(d) of the Commission's rules, 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(c)-(d), ARE WAIVED to the extent provided herein.

19. IT IS FURTHER 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, that the applications associated with the Requests for Review or Waiver filed by the Petitioners as listed in the Appendix ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

20. IT IS FURTHER 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, that USAC SHALL COMPLETE its review of each remanded application listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order.

21. 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

APPENDIX

Requests for Review or Waiver

Applicant	Application Number	Funding Year
Brownsville Independent School District	482620 482818	2005
Charlottesville City Schools	387023 387026 387283	2004
Cleveland County Memorial Library	401354 401368	2004
Coldwater Public Library	487376	2005
Dedham Public Schools	406505	2004
Dickens Public Library	299479	2002
Elbert County School District	452613 456680 476078 477346	2005
Granite School District	466373 468264 468281 468272 468255 452468	2005
Hancock County Public Library	397727	2004
Huntingdon Special School District	504027	2006
InterTechnologies Group	255133	2001
Jacksboro Independent School District	457383	2005
Kimball Public Library	492738	2006
Marathon County Public Library	477285	2005

Applicant	Application Number	Funding Year
Marion County School District Seven	476915	2005
Mark Twain Union Elementary School District	358862	2003
Maternity B.V.M. School	465427	2005
Milford E. Barnes Jr. School	347543	2003
Norfolk Country Agricultural High School	390006	2004
Our Lady of Grace School	465815	2005
The Pennsylvania School for the Deaf	454956	2005
Pierson Library	406663	2004
St. Malachy School	479436	2005
St. Mary's Public Library	496905	2006
St. Mary Star of the Sea School	464208	2005
St. Paul – Our Lady of Vilna School	481180	2005
School Administrative District 29	341484	2003
SEED Public Charter School of Washington, DC	372552	2003
Socorro Consolidated School District	473432	2005
South Boardman Elementary School	469237	2005
Urban Day School	478922	2005
Wisconsin Rapids Area School District	464910 474301	2005

**STATEMENT
COMMISSIONER ROBERT M. McDOWELL**

*Re: Requests for Waiver of the Decision of the Universal Service Administrator by
Adams County School District 14, Commerce City, CO, et al., and
Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6*

*Re: Requests for Review of the Decision of the Universal Service Administrator by
Alpaugh Unified School District, Alpaugh, CA, et al., and
Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6*

*Re: Requests for Review or Waiver of the Decision of the
Universal Service Administrator by
Brownsville Independent School District, Brownsville, TX, et al., and
Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6*

By adopting these three orders, we are granting 182 appeals of decisions taken by the Universal Service Administrative Company (USAC) that reduced or denied funding by applicants of the schools and libraries universal service mechanism. This program promotes the noble goal of assisting schools and libraries in the United States to obtain affordable telecommunications and Internet access. I support these decisions for several reasons. First, each of these appeals involves technicalities in the USAC procedures. Our actions here do not substantively alter the eligibility of the Schools and Libraries program. Furthermore, we find no indication of any intention to defraud the system on the part of any of these applicants. Also, our decisions and USAC's actions on appeal should have minimal effect on the level of the Universal Service Fund, because USAC has already reserved sufficient funds to take into account pending appeals. Finally, I am pleased that we impose reasonable time limits on USAC to address these cases on appeal so they can be resolved expeditiously.