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August 5, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
9300 E. Hampton Drive
Capital Heights, MD 20743

Re: CC Docket No. 02-6
Petition of Data Research Corporation for Order Directing Universal Service Administration Company to Process Puerto Rico Department of Education's Funding Request for Services Provided by Data Research Corporation under the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002

Dear Ms. Dortch:

On behalf of Data Research Corporation ("DRC"), we enclose herewith the following pleading to be presented to the Federal Communications Commission for its consideration:

- Petition of Data Research Corporation for Order Directing Universal Service Administration Company to Process Puerto Rico Department of Education's Funding Request for Services Provided by Data Research Corporation under the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002.

Sincerely,

Camilo K. Salas III

CKS:dg
Enclosure

cc w/enc.: William Maher
Chief, Wireless Competition Bureau
William K. Coulter (Fax: 202-775-1168)
Counsel for the Commonwealth of Puerto Rico

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	*	
	*	
Federal-State Joint Board on Universal Service	*	**CC DOCKET No. 02-6**
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PETITION OF DATA RESEARCH CORPORATION FOR ORDER DIRECTING UNIVERSAL SERVICE ADMINISTRATION COMPANY TO PROCESS PUERTO RICO DEPARTMENT OF EDUCATION'S FUNDING REQUEST FOR SERVICES PROVIDED BY DATA RESEARCH CORPORATION UNDER THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM FOR YEARS 2001 AND 2002

NOW COMES Data Research Corporation ("DRC") and requests that the Federal Communications Commission (the "Commission") issue an order requiring the Universal Service Administrative Company ("USAC") to process the funding requests of the Puerto Rico Department of Education ("PRDOE") for services provided by DRC to PRDOE in the years 2001 and 2002 under the Schools and Libraries Universal Service Support Mechanism. In support of this petition, DRC avers the following:

1. On November 14, 2003, the Commission adopted an Order (Exhibit "1") which directs "USAC to review and process the funding requests of PRDOE for FY 2001 and 2002, <u>other than those associated with DRC</u>..." (Order at ¶17).

2. In the Order the Commission "also direct[s] USAC not to process funding requests involving DRC for any services rendered during FY 2001 or 2002, or for prior years, in the absence of further direction from the Commission. (Order at ¶24).

3. The Order states that "it [is] appropriate under these circumstances for USAC to defer action indefinitely on all FRNs involving DRC because USAC is aware of an active law enforcement investigation directly related to these FRNs..." (Order at ¶24).

4. The Order also states that "[t]his precaution is necessary because the Department of Justice of the Commonwealth of Puerto Rico is investigating DRC's performance as a former contractor of record. The record before us contains no further information on the status or conclusions of that investigation." (Order at ¶24).

5. DRC attaches hereto as Exhibit "2" a letter dated March 28, 2006 from Pedro G. Goyco Amador, Chief Prosecuting Attorney of Puerto Rico, which makes clear that the Puerto Rico Department of Justice is <u>not</u> investigating DRC any more.

6. DRC also attaches hereto Exhibit "3" a letter from James J. Kurosat, Trial Attorney, U.S. Department of Justice, dated July 2005, which states an investigation by the United States Department of Justice is closed. (Exhibit "3").

7. Clearly the investigation by the Puerto Rico Department of Justice, which prompted the Commission's order to "USAC not to process funding requests involving DRC" has been concluded and no findings against DRC have been made. The same is true with respect to the investigation by the United States Justice Department. Therefore, there is no longer any reason to (1) not process funding requests involving DRC or (2) withhold payment for

services DRC provided four years ago.

8. In ¶16 of the Order the Commission recognizes "that indefinitely deferring action on applications could inadvertently harm individuals that ultimately will be cleared of any wrongdoing, particularly in those instances when an investigation takes years." In the case of DRC, the investigations have been concluded and DRC has been absolved of any wrong doing. Consequently it is no longer appropriate for USAC to defer action indefinitely on all FRNs involving DRC.

9. Although almost three years have passed since the Commission issued the Order, no findings of any wrongdoing have been made by anyone who has investigated DRC. It is therefore appropriate that the Commission issue an order requiring USAC to process PRDOE's funding requests for services provided by DRC to enable it to receive payment.

WHEREFORE, DRC prays that the Commission order USAC to process PRDOE's funding requests for services provided by DRC to PRDOE subject to the same auditing safeguards outlined in the Order.

Respectfully submitted:

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RECEIVED & INSPECTED
AUG 14 2006
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 02-6
	)	
Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002	)	

Order

Adopted: November 14, 2003 **Released: November 25, 2003**

By the Commission:

I. INTRODUCTION

1. In this Order, we direct the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC, or Administrator) to review and process the applications of the Puerto Rico Department of Education (PRDOE) for funding years (FY) 2001 and 2002[1] under the schools and libraries universal support mechanism (E-rate Program) with the conditions contained in this Order. We direct USAC to engage an independent auditor to examine PRDOE's compliance with the Commission's requirements for FY 2001 and 2002 funding, before USAC commits or disburses FY 2001 and 2002 funds on behalf of PRDOE.

2. We also direct USAC to engage an independent auditor to examine PRDOE's compliance with Commission rules during the first three years of its participation in the E-rate Program (FY 1998, 1999, 2000). Upon completion of that audit, we will address issues related to PRDOE's participation in the E-rate program for those three funding years, including any need for recovery of funds that were distributed during those years.

II. BACKGROUND

A. Program Rules and Policies

3. Under the E-rate program, eligible schools, libraries, and their consortia may apply for discounts on eligible telecommunications services, Internet access, and internal connections.[2]

[1] For these two funding years, PRDOE has requested $69,500,969 in internal connections, telecommunications services, and Internet access. *See* SLD's website, <http://www.sl.universalservice.org/>.

[2] 47 C.F.R. §§ 54.502, 54.503.

EXHIBIT
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In order to receive discounts on eligible services, the Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.[3] *The Commission's rules require eligible schools and libraries to seek competitive* bids for all services eligible for discounts.[4] After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering into binding service agreements with its chosen providers.[5] When choosing a service provider, the applicant must select the most cost effective bid.[6]

4. Once the applicant has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, the applicant must file FCC Form 471 to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has signed the contract, and an estimate of funds needed to cover the discounts requested for eligible services.[7] SLD reviews the FCC Forms 471 it receives and issues funding commitment decisions in accordance with the Commission's rules.

5. USAC does not provide funds directly to schools and libraries. Instead, the Administrator disburses funds to eligible service providers who, in turn, offer discounted services to eligible schools and libraries.[8] The applicant may ask its service provider to bill the discounted amount. Alternatively, the applicant may pay the full, undiscounted amount, and then file a designated form with the Administrator to request reimbursement.[9]

6. In order to protect against waste, fraud, and abuse, action on pending applications is deferred when USAC is made aware of investigations by federal, state, or local authorities that potentially implicate compliance with program rules for that funding request. In order to avoid jeopardizing non-public investigations, USAC does not notify applicants that an application may

[3] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000).

[4] 47 C.F.R. § 54.504; *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

[5] 47 C.F.R. § 54.504(b). Services also may be provided under tariff or month-to-month arrangements.

[6] *Universal Service Order*, 12 FCC Rcd at 9029-30, para. 481.

[7] 47 C.F.R. § 54.504(c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

[8] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291, paras. 8-9 (rel. October 8, 1999), *recon. pending*; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, FCC 00-350 (rel. October 26, 2000), *appeal pending sub nom., United States Telecommunications Association v. Federal Communications Commission*, No. 00-1500, filed November 27, 2000; *see also* SLD's website, <http://www.sl.universalservice.org/>.

[9] The reimbursement form is called the Billed Entity Applicant Reimbursement (BEAR) Form.

be on hold.

B. USAC Audit of PRDOE and Pending Investigations

7. In accordance with its standard operating procedures, USAC committed and disbursed funds on behalf of PRDOE during FY 1998-2000 to two service providers, Puerto Rico Telephone Company (PRTC) and Data Research Communications Company (DRC).[10] After the first year of operation of the program, USAC initiated audits of selected beneficiaries in order to carry out its obligation to protect against waste, fraud and abuse. This audit of FY 1998 beneficiaries, conducted by an independent audit firm, was completed in 2000. The audit identified apparent program violations with respect to PRDOE for funding year 1998. Specifically, the independent auditors determined that, in the classrooms visited, there were no desktop computers, which would appear to violate the Commission's requirement that recipients have the necessary resources to utilize the services funded by the E-rate.[11]

8. In response to that audit, on December 5, 2001, USAC suspended payments on behalf of PRDOE for FY 1998-2000 for failure to "secure access to all of the resources, including computers" necessary to make use of the discounted services purchased with the E-rate funding.[12] After consultation with the Wireline Competition Bureau, USAC also suspended consideration of PRDOE's applications for FY 2001 and 2002, and it required PRDOE to respond to the findings of the USAC-initiated audit.[13] In its December 5, 2001 Suspension Letter, USAC asked PRDOE for a detailed analysis of the state of the E-rate program in Puerto Rico, including information on computer installation, curriculum software, teacher training and the school electrical systems.[14] In January, 2002, PRDOE responded to USAC with written and in-person reports. PRDOE stated that it had launched a three-pronged E-rate recovery effort that focused on PRDOE's schools, its central communications network, and its central offices.[15] PRDOE updated its reports in April and October, 2002, detailing its progress in achieving the goals of its recovery program. On September 27, 2002, PRDOE wrote USAC, urging USAC to resume its processing of PRDOE's FY 2001 and 2002 applications.[16]

9. Meanwhile, in the fall of 2000, soon after the USAC-initiated audit, Puerto Rico held

[10] PRDOE received commitments for its 1540 schools for telecommunications services, Internet access, and internal connections for FY 1998, 1999, and 2000, totaling $158 million dollars. Of that, $101 million dollars was disbursed. *See* Letter from Dr. César A. Rey Hernández, Secretary, PRDOE, to Jane Mago, General Counsel, Federal Communications Commission, dated January 30, 2003 (*PRDOE Petition*) at 4 and Exhibit 1 (Appendix B of Arthur Andersen Audit Report, dated October 17, 2001). In FY 1998, PRDOE selected Puerto Rico Telephone Company (PRTC) for telecommunications service and Internet access, and Data Research Communication Corporation (DRC) for internal connections. In FY 1999, PRDOE selected PRTC for telecommunications service, both PRTC and DRC for Internet access, and DRC for internal connections. In FY 2000, PRDOE selected DRC for Internet access, and PRTC and DRC for internal connections.

[11] *PRDOE Petition* at Exhibit 1, page B-vi.

[12] Letter from George McDonald, USAC, to PRDOE, dated December 5, 2001, at 1-2. (Suspension Letter).

[13] *Id.*

[14] *Id.* at 2.

[15] *PRDOE Petition* at Exhibit IV.

[16] Letter from PRDOE to George McDonald, USAC, dated September 27, 2002.

general elections. In early 2001, the new governor took office and appointed a new Secretary of Education to head PRDOE. Upon taking over, the new Secretary determined that in many schools the equipment did not appear to have been properly installed, and in other schools the electrical infrastructure was obsolete or inadequate.[17] The new Secretary immediately began corrective measures, including hiring an outside consulting firm to undertake a comprehensive and critical analysis of the status of the E-rate program under PRDOE.[18] PRDOE cancelled DRC's service contract under the E-rate program, and subsequently asked the Department of Justice of the Commonwealth of Puerto Rico to investigate DRC's record of performance.[19] At the same time, other federal and local authorities began investigating questionable procedures at the PRDOE under the prior administration's tenure. Between January, 2001 and January, 2002, four separate entities initiated investigations of PRDOE.[20] These investigations, examining events that occurred prior to January, 2001, uncovered a past record of competitive bidding violations, contracts inconsistent with federal requirements, and funds spent on "unallowable activities."[21] Irregularities in the use of U.S. Department of Education funds led the U.S. Department of Justice to indict Victor Fajardo-Velez, Secretary of Education for Puerto Rico from 1994 to 2000. That individual subsequently was sentenced to three years in federal prison and required to pay restitution of over $4 million.[22] Federal investigations into these matters are ongoing.

10. As previously noted, late in 2001, USAC suspended payment to PRDOE for all outstanding commitments for FY 1998, 1999, and 2000. Subsequently, PRTC brought a lawsuit against DRC, alleging it had failed to pay PRTC for services rendered to it. DRC, in turn, counterclaimed, and filed a third-party complaint against USAC in the Commonwealth Court of Puerto Rico.[23] The complaint seeks $77 million in damages from USAC, based in part on the contention that funding commitments issued by USAC constituted binding contracts with the PRDOE. DRC claims that USAC is responsible for any funds due to PRTC based on USAC's funding commitments in previous program years. DRC is claiming that USAC's cessation of payments under the schools and libraries support mechanism is the cause of DRC's default

[17] *PRDOE Petition* at 3.

[18] *Id.*

[19] *Id.* at 5 and Exhibit XII.

[20] Investigations were launched by (1) a committee of the Puerto Rican Senate; (2) by the Department of Justice of the Commonwealth of Puerto Rico; (3) by a committee of prominent citizens ("Blue Ribbon Committee"), appointed by Commonwealth Governor Sila M. Calderón (*see PRDOE Petition* at 5); and (4) by the U.S. Department of Education. *PRDOE Petition* at 5-6; Letter from William D. Hansen, U. S. Department of Education, to Puerto Rico Governor Sila M Calderón, dated May 29, 2002, at 2 (USDOE Letter).

[21] USDOE Letter at 2.

[22] *See* Criminal Docket for Case 02-CR-42-ALL, *U.S. v. Victor Fajardo-Velez*, U.S. District Court, Puerto Rico (San Juan), filed Jan. 22, 2002, sentence entered December 12, 2002. The indictment charged that between 1994 and 2000, the defendant and his co-defendants extorted approximately $4.3 million from PRDOE contractors. Defendant recruited his sister-in-law to represent two corporations, in order to divert funds from them, and he awarded approximately $138 million in contracts to four corporations owned by other defendants. Joint press release of the United States Attorney, District of Puerto Rico; the Puerto Rico Office of the Federal Bureau of Investigation; U.S. Department of Education, Office of Inspector General; and the Puerto Rico Office of the Comptroller, January 23, 2002.

[23] Puerto Rico Telephone Company v. DRC Corporation v. Universal Service Administrative Company, Civ. No. KAC-02-5075-(901) (Sala Superior de San Juan).

against PRTC. DRC also claims relief against USAC based on USAC's funding commitments to PRDOE.

C. PRDOE's Petition

11. On January 30, 2003, PRDOE petitioned the Commission to direct USAC to resume processing PRDOE's applications for FY 2001 and 2002.[24] PRDOE argues that such relief is appropriate for the following reasons: (1) as a result of the 2000 general elections in Puerto Rico, the leadership of PRDOE is new, and unaffiliated with the administration from the first three years of the E-rate program in Puerto Rico; (2) independent audits identified the needed changes in administrative structure and control mechanisms; (3) PRDOE launched a "recovery program" to implement the findings of the independent auditors; and (4) PRDOE responded promptly to requests by USAC for documents and other information.

12. PRDOE states that its recovery program has corrected three key areas that were formerly deficient: (1) the network itself; (2) the infrastructure in the schools; and (3) the infrastructure at the PRDOE central offices. Carried out with funding from non-E-rate sources, PRDOE states it has made $80 million in school electrical repairs, installed 3,300 school computers, set up network help desks with 43 technicians, and trained 27,000 teachers (65% of all teachers), with training scheduled for more teachers. PRDOE states that it is strictly enforcing bidding regulations. PRDOE has rewritten vendor contracts to include enforceable anti-corruption clauses. PRDOE also has instituted a validation process that measures actual access of schools to the network. According to PRDOE, it has moved from practically no schools connected to the network to more than 600 schools.[25]

13. PRDOE pledges to continue cooperating with ongoing investigations of funding years 1998-2000.[26] It commits to comply with all applicable local and federal laws, and to periodically retain an external independent professional firm to evaluate the operational aspects of its E-rate projects and future use of E-rate funds.[27] It also states it will apply its new anti-corruption procedures to funding requests for FY 2001 and 2002, including any service substitution requests that may be required since the original submissions for FY 2001 and 2002.

14. PRDOE states that it has insufficient funds to keep its technology development

[24] *See PRDOE Petition. See also Wireline Competition Bureau Seeks Comment on a Petition by Puerto Rico Department of Education to Release Funds Associated With Schools and Libraries Universal Service Support Mechanism for Funding Years 2001 and 2002*, CC Docket No. 02-6, Public Notice, DA 03-1731 (rel. May 16, 2003) (*PRDOE Public Notice*). Comments, all in support of PRDOE's Petition, were submitted by the Hon. Anibal Acevedo-Vilá, Resident Commissioner, Commonwealth of Puerto Rico, U.S. House of Representatives; Centennial Communications Corp.; and The Hispanic Information and Telecommunications Network, Inc. PRDOE had selected PRTC for telecommunications service and Internet access and DRC for Internet access and internal connections for FY 2001. PRDOE selected PRTC for telecommunications service, Internet access, and internal connections and Sprint for telecommunications service for FY 2002.

[25] *PRDOE Petition* at 5. There are 1,540 schools in the public system of the Commonwealth of Puerto Rico. *Id.* at 2, note 1.

[26] *See id.* at 5-6.

[27] *Id.* at 6.

program underway without reentry into the E-rate program.[28] PRDOE states that vendors provided E-rate-eligible services to PRDOE during funding years 2001-2002 and still have not received payment for these services.[29] It also indicates its desire to substitute a service provider other than DRC for internal connections in Funding Year 2001, upon receiving a funding commitment. *Finally, PRDOE states that those who will lose the most from a curtailment of its* technology initiative are the 660,000 students enrolled in Puerto Rico's public schools. According to PRDOE, every year that PRDOE is unable to participate in the E-rate program results in 50,000 Puerto Ricans graduating from high school without the benefits of the E-rate program.[30]

III. DISCUSSION

15. PRDOE asks the Commission to direct USAC to resume processing its applications seeking discounts from the schools and libraries support mechanisms for FY 2001 and 2002. As explained above, USAC deferred action on these applications as a result of the beneficiary audit which revealed evidence of potential program violations by PRDOE in prior years. Subsequent to that audit, USAC became aware of a number of local and federal law enforcement investigations involving activities of the Puerto Rico Department of Education. Under the facts presented here, it was appropriate for USAC to defer action on PRDOE's FY 2001 and 2002 applications, upon receiving the results of the beneficiary audit and learning of the additional investigations underway in Puerto Rico. We believe that such action is necessary to ensure that the goals of section 254 are met. Specifically, we must guard against waste, fraud, and abuse of E-rate funds to ensure that all schools and libraries receive the benefits of access to advanced telecommunications and information services. This is particularly important here because demand for discounts under the schools and libraries support mechanism continues to exceed the supply of funds. To guard against waste, fraud, and abuse, it is reasonable for USAC generally to defer action on applications upon receiving evidence of potential program violations, including evidence acquired from an active law enforcement investigation related to the E-rate related activities of the applicant or any of the service providers utilized by that applicant, until such time as questions raised by the evidence can be resolved.[31] Thus, USAC correctly deferred action on PRDOE's FY 2001 and 2002 applications in light of the investigations by several third parties of PRDOE's conduct with regard to activities related to their 1998, 1999, and 2000 E-rate applications. That deferral should generally continue until the investigation is resolved, or until there is sufficient reason to believe that potential program violations are not implicated in the deferred applications.

16. We find that USAC proceeded in a probing and cautious fashion in this case, which is appropriate with respect to applications and/or Funding Request Numbers (FRNs) that are linked to an ongoing law enforcement investigation. At the same time, we recognize that

[28] *Id.* at 5.

[29] *PRDOE Public Notice* at 2; *see also* Letter from Jon Slater, PRT Telefonica de Puerto Rico, to César Roy, PRDOE, June 13, 2003. (PRT Telefonica de Puerto Rico Letter)

[30] *PRDOE Petition* at 5.

[31] USAC's practice, which, as this case demonstrates, is the correct one, is specifically to defer action on any application or funding request number (FRN) when it is aware of an active law enforcement investigation of either the applicant or service provider related to that application or FRN.

first three E-rate funding years, FY 1998, 1999 and 2000. This audit shall be conducted separately from the audit of FY 2001 and 2002, and is *not a precondition to the release of FY* 2001 and 2002 funds on behalf of PRDOE, should such commitments and disbursements be warranted. This audit may be conducted by the same auditor as the audit for FY 2001 and 2002, but that is not a requirement. As with the audit for FY 2001 and 2002, the audit for FY 1998-2000 shall be conducted in a manner consistent with the procedures currently being performed for pending beneficiary audits, and in accordance with government auditing standards. The Commission will use the audit of FY 1998-2000 in determining what action is appropriate with respect to PRDOE for the first three years of PRDOE's E-rate program.

26. We will not hold PRDOE to a standard above and beyond that required by our rules, but neither will we accept anything less. We caution PRDOE that should it be determined that PRDOE did not, in fact, properly comply with all applicable FCC rules for funding years 2001 and 2002, funding commitments for those years will be denied. The heightened scrutiny to which we subject PRDOE's requests is appropriate in light of the actions of PRDOE in the past. In light of these factors, we find it consistent with section 254 to direct USAC to resume processing of PRDOE's FY 2001 and 2002 funding requests associated with PRTC and Sprint, conditioned on the results of the independent audit demonstrating PRDOE's material compliance with the Commission's rules. The Commission is committed and obliged to implement the E-rate program by advancing the overall public interest, a requirement we find is fulfilled by this Order.[54]

IV. ORDERING CLAUSES

27. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, 47 U.S.C. §§ 151-154 and 254, and section 54.503 of the Commission's rules, 47 C.F.R. § 54.503, that the PRDOE Petition filed by the Puerto Rico Department of Education on January 30, 2003, IS GRANTED to the extent provided herein, and subject to the conditions stated herein. We instruct SLD to resume review of PRDOE's funding requests for year 2001 and 2002 applications and, if appropriate, issue the requisite funding decision commitment letters and subsequent disbursements pursuant thereto.

28. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[54] Upon conclusion of this independent audit, we will review the first three years of PRDOE's participation in the E-rate program.

recognize that it may not be appropriate to perform all the procedures currently being performed in the ongoing beneficiary audits, given that in this case the entity has not actually received any funding under the program. Moreover, we note that the audit procedures currently being performed in the ongoing beneficiary audits are designed not only to determine whether beneficiaries complied with all Commission rules in effect during the relevant funding year, but also to identify broader programmatic issues that may warrant revisions to our rules. The procedures to be performed in the audit that we require today shall be tailored to address the particular issues raised in past investigations of PRDOE relating to compliance with Commission rules in effect for the relevant funding years.

24. Based on the record before us, we also direct USAC not to process funding requests involving DRC for any services rendered during FY 2001 or 2002, or for prior years, in the absence of further direction from the Commission. This precaution is necessary because the Department of Justice of the Commonwealth of Puerto Rico is investigating DRC's performance as a former contractor-of-record.[50] The record before us contains no further information on the status or conclusions of that investigation. We conclude it appropriate under these circumstances for USAC to defer action indefinitely on all FRNs involving DRC because USAC is aware of an active law enforcement investigation directly related to these FRNs (namely, an investigation relating specifically to the conduct of DRC vis-à-vis PRDOE as a vendor of services supported by the E-rate). Conversely, where, as here, the applicant selected other service providers for other funding requests, and we are not aware of any pending investigations specifically relating to those service providers' conduct vis-à-vis PRDOE, we conclude it appropriate for USAC to proceed with respect to those other FRNs, after subjecting those FRNs to heightened scrutiny tailored to the nature of the allegations under investigation.[51] Further, to the extent that funds are committed to PRDOE for FY 2001 and 2002, requests to change service providers[52] and/or substitute service or equipment[53] may be considered, consistent with existing precedent. Such requests will not be entertained with respect to the FRNs involving DRC at this time, pending resolution of the investigations relating to DRC.

25. Finally, USAC has not undertaken a full investigation of the circumstances surrounding PRDOE's participation in the E-rate program during its first three years. It is critical that we expeditiously resolve all outstanding issues relating to funding years 1998, 1999 and 2000. We accordingly direct USAC to engage an independent auditor to examine PRDOE's

[50] *PRDOE Petition* at 5, Exhibit XII.

[51] Thus, under the facts presented here, for funding requests involving service providers other than the one known to be under investigation, USAC may issue affirmative funding commitments if it determines, after subjecting those requests to more intensive review, that the service providers for those FRNs are not implicated in the issues under investigation, and the applicant and service providers have complied with program rules for those FRNS. The existence of an allegation, for instance, of a competitive bidding violation with respect to the selection of one service provider should not preclude action on FRNs involving other service providers.

[52] *See In the Matter of Request for Review of the Decision of the Universal Service Administrator by Copan Public Schools, Copan Oklahoma, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*). *See also* http://www.sl.universalservice.org/reference/SpinChange.asp.

[53] *See In the Matter of Request for Guidance by Universal Service Administrator Concerning the Request of Los Angeles Unified School District*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 3496, at 3499 (Com. Car. Bur. 2001). *See also* http://www.sl.universalservice.org/reference/ServiceSub.asp.

things, compliance with the Commission's rules on the competitive bidding process in both FY 2001 and 2002.

21. Although USAC has not acted on PRDOE's FY 2001 and 2002 applications, we understand that PRDOE has, in fact, received at least some of the services for which it requested discounts.[45] We also understand these service providers have not been paid the full (nondiscounted) amount.[46] This situation is not unusual. Due to the vast number of applications each year for the E-rate program, commitments often may not occur by the time a new funding year, or even the new school year, commences. Applicants proceed at their own risk in taking these services in advance of funding commitments, and ultimately may be liable for the full amount of the services, should funding commitments be denied. In most instances, such applicants receive commitments at some point after the funding year begins, and therefore obtain their discounts retroactively. We, therefore, do not fault PRDOE or its suppliers for obtaining or providing services in the absence of commitments, so long as it is understood that the eventual funding approval and payment, if any, will have to meet fully the requirements of our rules.[47]

22. Taken together, the change in PRDOE's leadership, administration and operating procedures represents a significant demarcation point in PRDOE's relationship with the E-rate program. We therefore view PRDOE's conduct with respect to FY 1998, 1999 and 2000 as severable from that of FY 2001 and 2002, such that the two periods should be treated with separate approaches and in separate orders. The analyses required for these two periods (FY 1998-2000 and FY 2001-2002) stem from separate sets of PRDOE decision-makers employing separate administrative procedures. Audit techniques will be able to examine the relevant conduct during distinct phases of PRDOE's participation in the E-rate program.

23. While we are aware that at least four separate investigations have been initiated relating to PRDOE, USAC has not, to date, undertaken an investigation of PRDOE's compliance with our rules during funding years 2001 and 2002. As a precondition to the commitment and release of FY 2001 and 2002 funds to PRDOE's suppliers, PRDOE must be subject to an independent audit to provide assurances that PRDOE has complied with the Commission's E-rate rules for FY 2001 and 2002. USAC shall select the auditor, and that auditor shall perform an audit consistent with the procedures currently being performed for pending beneficiary audits.[48] USAC may, at its discretion, utilize the auditor currently performing these beneficiary audits. The audit shall be conducted in accordance with government auditing standards.[49] We

[45] PRT Telefonica de Puerto Rico Letter.

[46] *Id.*

[47] *Tennessee Order* at paras. 9, 18.

[48] USAC has retained the services of KPMG LLP to perform agreed-upon procedures audits of 78 beneficiaries of the schools and libraries support mechanism for funding year 2000. The procedures were developed by USAC, in consultation with the Commission's Office of Inspector General. The audits are being conducted in accordance with standards set by the American Institute for Certified Public Accountants and Government Auditing Standards.

[49] *See* Chief Financial Officer's Act of 1990, Public Law No. 101-576, as expanded by the Government Management Reform Act of 1994, Public Law No. 103-356. *See also Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Universal Service Fund and the Telecommunications Relay Services Fund*, WC Docket No. 03-213, Order, FCC 03-232 (rel. Oct. 3, 2003).

both section 254's requirement of ensuring quality services "at just, reasonable and affordable rates" and our duty to prevent waste, fraud and abuse.[40] We conclude that several factors weigh in favor of directing USAC to resume consideration of PRDOE's FY 2001 and 2002 funding requests seeking discounts for services provided by PRTC and Sprint.

19. At the outset, we note that the allegations under investigation relate to activities occurring in prior funding years, while PRDOE seeks action on funding requests for subsequent years. We conclude that it is appropriate for USAC to proceed with respect to the later funding years, after subjecting the applications to heightened scrutiny to provide assurances that the issues under investigation for the earlier years are not present in FY 2001 and 2002. Based on the representations made by PRDOE in this proceeding, PRDOE is rectifying the problems created by the prior administration.[41] These efforts have allowed PRDOE to move beyond the problems of the past and towards section 254's goal of enhancing access at reasonable and affordable rates.[42] The current administration of PRDOE has been and continues to be responsive to federal and local authorities requesting information. PRDOE has undertaken significant measures to install infrastructure, network, and desk equipment, and has undertaken training to utilize these resources. Moreover, PRDOE launched and implemented these changes from its own funding sources, without relying on E-rate program funds.

20. Furthermore, we conclude, based on the record before us, that there are no outstanding allegations of waste, fraud, abuse, or other wrongdoing relating to any of the current PRDOE leadership or employees, with respect to funding years 2001 and 2002. The only challenge to PRDOE's procedures affecting those funding years has been resolved in PRDOE's favor. In response to allegations of bidding irregularities brought by the losing bidder in PRDOE's FY 2001 award, the Commonwealth's appellate court found against that bidder and for PRDOE.[43] Similarly, there is no evidence that allegations in a currently pending bid protest for FY 2003 affects PRDOE's funding requests for FY 2001 and 2002. Accordingly, we think that the allegations pertaining to FY 2003 should be considered separately and should not bar consideration of PRDOE's funding request for FY 2001 and 2002.[44] To further ensure that all rules have been complied with for FY 2001 and 2002, we direct USAC, as discussed more fully below, to engage the services of an independent auditor to provide assurances that there has been compliance with the Commission's rules. We expect that auditor will examine, among other

[40] 47 U.S.C. § 254 (b)(1); *Tennessee Order* at paras. 17, 22-23.

[41] PRDOE explains that its E-rate recovery program has connected 600 schools to the central network, has trained 65% (27,000) of its teaching force, has made $80 million in school electrical repairs, and installed 3,300 school computers. *PRDOE Petition* at 3-5.

[42] 47 U.S.C. § 254 (b)(1).

[43] *Centennial De Puerto Rico v. Junta De Subastas Central-Departamento De Educación*, No. JR-2002-003, Estado Libre Asociado De Puerto Rico En El Tribunal De Circuito De Apelaciones, Circuito Regional 1 De San Juan, (Feb. 6, 2003).

[44] The challenge to the FY 2003 award was filed by the losing bidder in FY 2003, who happened to have been the winning bidder in the FY 2002 award. That challenge to the FY2003 award is under consideration in *Puerto Rico Telephone Company, Inc. v. Junta de Subastas Central-Departamento de Educación*, Solicitud de Reconsideración de Adjudicacion de Subasta (Junta de Revision Administrativa Departamento de Educación, filed February 14, 2003). We conclude that USAC should defer action on the portions of PRDOE's funding year 2003 application relating to this action until this matter is resolved by the appropriate authorities in Puerto Rico, or it obtains adequate assurances from an independent auditor that there are no bidding irregularities with respect to FY 2003.

indefinitely deferring action on applications could inadvertently harm individuals that ultimately will be cleared of any wrongdoing, particularly in those instances when an investigation takes years. As we recently stated in addressing the State of Tennessee's petition for relief, we are disinclined to relegate applications to an uncertain status for an indefinite period of time during the pendency of any protracted investigations.[32] Thus, we believe that there are circumstances where deferring action on an application in whole or in part is unnecessary to prevent waste, fraud and abuse, notwithstanding the pendency of an ongoing law enforcement investigation.[33] In reviewing such applications, however, USAC must subject such applications and/or FRNs to probing and cautious review and carefully consider the specific facts presented in each case. In particular, where, as is true here, there are law enforcement investigations pending, we think it appropriate for USAC to subject these requests to a more intensive review, tailored to the nature of the allegations that have been raised.[34]

17. Here, it was appropriate for USAC to defer action on PRDOE's FY 2001 and 2002 applications in light of the ongoing investigation of activities at PRDOE in the recent prior years, particularly in light of the indictment and conviction of the former Secretary of Education for Puerto Rico for extortion activities related to contractors for PRDOE.[35] However, as discussed below, PRDOE has convinced us that it has taken sufficient action to ensure that the prior issues have been addressed and will not occur again. Thus, we direct USAC to review and process the funding requests of PRDOE for FY 2001 and 2002, other than those associated with DRC, consistent with the conditions contained in this Order. We conclude that such action is appropriate in light of PRDOE's change in leadership and the achievements of its recovery program. This conclusion in no way should be viewed as condoning the actions that occurred in the first three years of PRDOE's E-rate funding. We will address the appropriate measures that will be taken with respect to funding years 1998-2000 in a separate, forthcoming order.

18. As we stated in the recent *Tennessee Order*, the Commission takes seriously all allegations of waste, fraud and abuse.[36] We are disturbed by the allegations of fraud and waste relating to PRDOE's activities during the first three years of PRDOE's participation in the E-rate program.[37] Should the investigations of the first three years result in additional convictions, the Commission's suspension and debarment rules will automatically be triggered.[38] The petition before us, as well as our review of the record, however, convinces us that the fundamental circumstances of leadership and administrative control have changed dramatically since the first three years of the PRDOE program.[39] In determining whether relief is appropriate, we fulfill

[32] *See Request for Immediate Relief by the State of Tennessee*, Order, CC Dockets No. 96-45, 97-21, FCC 03-161 (rel. July 2, 2003) (*Tennessee Order*), at paras. 12, 17.

[33] Of course, USAC must continue to deny all requests that are inconsistent with our rules and requirements applicable to the schools and libraries support mechanism.

[34] This heightened scrutiny may include site visits and other investigatory activities, as well as independent audits.

[35] *See* note 22 above.

[36] *Tennessee Order* at para. 17.

[37] *See supra* note 20.

[38] *Second Report and Order*, 18 FCC Rcd at 9224-9228, paras. 64-77. *See also* 47 CFR § 54.521

[39] *E.g.*, PRDOE's recovery program has revamped the infrastructure and networks in and among the schools, and in PRDOE's central offices. *PRDOE Petition* at 4.

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF JUSTICE
OFFICE OF THE CHIEF PROSECUTING ATTORNEY
P.O. BOX 9020192, SAN JUAN, PR 00902-0192

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AUG 14 2006
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Hon. Pedro G. Goyco Amador
Chief Prosecuting Attorney

Tels: (787) 729-2400 / 729-2199
Fax: (787) 977-2245

March 28, 2006

John F. Nevares
John F. Nevares & Assoc. PSC
P.O. Box 13667
San Juan, PR 00908-3667

Dear Mr. Nevares:

It is hereby certified that as of January 12, 2006 there were no pending investigations of Data Research Corporation ("DRC") by the Department of Justice of the Commonwealth of Puerto Rico related to DRC's involvement with the E-Rate Program.

Sincerely,

Pedro G. Goyco Amador
Chief Prosecuting Attorney of Puerto Rico

EXHIBIT
tabbies

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AUG 14 2006

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U.S. Department of Justice

Antitrust Division

Please refer
to: 60-514191-0008

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July 7, 2005

FedEx

John F. Nevares, Esq.
P.O. Box 13667
San Juan, PR 00908-3667

Re: Grand Jury Subpoena to Data Research Corporation, dated 9/10/03

Dear Mr. Nevares:

Enclosed please find your client's documents produced in response to the above referenced subpoena. We are returning these documents because we have concluded our investigation.

If you have any questions, please don't hesitate to call me at the above number.

Sincerely,

James J. Kurosad
Trial Attorney

EXHIBIT

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