

BREVARD COUNTY SCHOOL DISTRICT
2700 Judge Fran Jamieson Way
Viera, FL 32940

April 2, 2007

Letter of Appeal
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

CC Docket No 02-6
CC Docket No 96-45

Request for Review of Universal Service Administrative Company (USAC) Administrator's Decision on Appeal, dated December 19, 2006, re Form 471 Application Number 509122

Authorized person who can best discuss this Appeal with you

Richard Larson
eRate Consulting Services, LLC
141 New Road, Suite 21
Parsippany, NJ 07054

Phone: (888) 249-1661 ext 323
Fax: (866) 534-1584
Email: rlarson@erateconsulting.com
(preferred mode of contact)

Application Information

<u>Entity</u>	Brevard County School District
<u>Billed Entity Number</u>	127700
<u>Funding Year</u>	FY9 (2006-2007)
<u>Form 471 Application Number</u>	509122 ¹
<u>Funding Request Number</u>	1425124
<u>Total Funding Commitment Request</u>	\$4,869.18
<u>Document Being Appealed</u>	Administrator's Decision on Appeal Letter, dated February 9, 2007, re Form 471 Application Number 509122 ²
<u>Decision Being Appeal</u>	Denied

Requests:

The Brevard County School District (Brevard CSD) respectfully requests that the FCC accept this letter of appeal and enter an order reversing the decision of the Schools and Libraries Division (SLD) to deny the October 13, 2006 appeal by Brevard CSD re FRN 1425124, and to enter an order instructing SLD to approve funding for this FRN.

Alternatively, Brevard CSD seeks a waiver of certain procedural steps to which it believes it correctly adhered, but which form the basis of SLD's denial of funding, and to enter the order requested above.

¹ FCC Form 471 # 509122 funding year 7/1/2006 – 6/30/2007, posted and certified on 2/13/2006 by Brevard County School District.

² Letter from Universal Service Administrative Company, Schools and Libraries Division, to Richard Larson, eRate Consulting Services LLC, dated February 9, 2007 (Administrator's Decision on Appeal – Funding Year 2006-07).

Request for Review

In their "Explanation" portion of the February 9, 2007 Administrator's Decision on Appeal Letter (ADL), SLD acknowledges that the RFP in question "was posted on January 13, 2006, with a due date of February 9, 2006."³ Counting the RFP posting date of January 13, 2006 as day #1, February 9, 2006 is day #28 of the RFP posting period (see table below).

	SUN	MON	TUE	WED	THU	FRI	SAT	
DATE RFP DAY #	JANUARY						13 1	14 2
DATE RFP DAY #	15 3	16 4	17 5	18 6	19 7	20 8	21 9	
DATE RFP DAY #	22 10	23 11	24 12	25 13	26 14	27 15	28 16	
DATE RFP DAY #	29 17	30 18	31 19					
DATE RFP DAY #	FEBRUARY			1 20	2 21	3 22	4 23	
DATE RFP DAY #	5 24	6 25	7 26	8 27	9 28			

On this basis, Brevard CSD demonstrates that their RFP was available for the required 28 days. However, contrary to this simple counting process, SLD states: "This due date provided potential bidders with only 27 days to respond to the RFP."³ Brevard CSD contends that this statement is in error, and that the RFP was available for the required 28 day period.

The Schools & Libraries Division (SLD) web site states that an applicant must "wait 28 days after ... public availability of your Request for Proposals (RFP) ... before selecting a vendor or executing a contract;"⁴ Brevard CSD performed its bid evaluation and awarded the contract for these services on February 10, 2006, as shown in FRN 1425124, Item 18, in Form 471 # 509122.⁵ In its ADL, SLD does not contest Brevard CSD's compliance with this step of the competitive bidding process.

Alternative Request for Waiver

In the alternative, *i.e.*, in the event that the Commission determines that Brevard CSD provided potential bidders with only 27 days to respond to the RFP, Brevard CSD respectfully requests a waiver of this procedural requirement for FRN 1425124.

Based on its understanding of a process which is undeniably complicated and confusing,⁶ Brevard CSD had planned what it believed to be a competitive bidding process that

³ Ibid.: p.1.

⁴ Web page "Step 3: Open a Competitive Bidding Process (Form 470) – Schools and Libraries – USAC", URL: <http://www.universalservice.org/sl/applicants/step03>: 3rd paragraph, 5th bullet.

⁵ FCC Form 471 # 509122, p. 2: "18. Contract Award Date: 02/10/2006".

⁶ "As we recently noted, many E-rate program beneficiaries ... contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors." Bishop Perry Middle School, New Orleans, LA, *et al.*, File No. SLD-487170, *et al.*, CC Docket No. 02-6, order released May 19, 2006., p.1.

complied with SLD procedures. Brevard CSD established a 28-day RFP posting schedule based on the rationale outlined above. Having allowed the RFP to be available for 28 days to potential bidders, Brevard waited until February 10, 2006 to select the service provider and award the contract, in accordance with SLD's procedures.

While this misinterpretation of SLD procedures led to denial of FRN 1425124, the FCC's Bishop Perry decision offers remedy for procedural errors where:

"... there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements."⁷

The Commission may waive any provision of its rules on its own motion and for good cause shown.⁸ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁹ 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.¹⁰

Brevard CSD asks the Commission not to penalize its students and citizenry for the procedural errors discussed above when clearly the intent was to comply fully with SLD procedures.

Conclusion

In light of the above, Brevard CSD respectfully requests that the Commission adopt and incorporate in a final order the arguments and evidence above and in Brevard CSD's October 13, 2006 appeal,¹¹ or alternatively in its request for waiver, and instruct SLD to approve the requested \$4,869.18 funding for FRN 1425124. Brevard CSD further requests that the Commission grant to it all other relief to which it deems Brevard CSD entitled.

Brevard CSD appreciates the Commission's review and consideration of its appeal. We are available to respond to questions or to provide any further information requested by the Commission

Authorized signature for this Appeal¹²



Date: 4/2/2007

Richard Larson
eRate Consulting Services, LLC
141 New Road, Suite 21
Parsippany, NJ 07054

Phone: (888) 249-1661 ext 323
Fax: (866) 534-1584
Email: rlarson@erateconsulting.com

⁷ Ibid.: paragraph 11.

⁸ 47 C.F.R. § 1.3.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁰ *Northeast Cellular*, 897 F.2d at 1166.

¹¹ Letter of Appeal from Brevard County School District to Schools and Libraries Division – Correspondence Unit, dated 10/13/2006, re: “Appeal of Funding Commitment Decision Letter Issued on August 15, 2006”.

¹² “Letter of Agency for Funding Year 9” from Leroy Berry, Acting Superintendent, Brevard County School District, authorizing employees of eRate Consulting Services, LLC, to perform e-rate services on behalf of Brevard.

BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTES 1 & 5 - FY9 471 509122 application

FCC Form 471

Do not write in this area.

Approval by OMB
3060-0806

**Schools and Libraries Universal Service
Description of Services Ordered and Certification Form 471**

Estimated Average Burden Hours per Response: 4 hours

This form asks schools and libraries to list the eligible telecommunications-related services they have ordered and estimate the annual charges for them so that the Fund Administrator can set aside sufficient support to reimburse providers for services.

**Please read instructions before beginning this application. (You can also file online at www.sl.universalservice.org.)
The instructions include information on the deadlines for filing this application.**

Applicant's Form Identifier

(Create your own code to identify THIS form 471) Maint-pbx-9

Form 471 Application#

(To be assigned by administrator)

509122

Block 1: Billed Entity Information (The "Billed Entity" is the entity paying the bills for the service listed on this form.)

1 a Name of Billed Entity BREVARD COUNTY SCHOOL DISTRICT

2 a Funding Year: July 1, 2006 Through June 30: 2007 Billed Entity Number: 127700

4 a Street Address, P.O. Box, or Routing Number 2700 JUDGE FRAN JAMIESON WAY

City VIERA

State FL Zip Code 32940 6699

5 a Type of Application Individual School (individual public or non-public school)
 School District (LEA; public or non-public [e.g. diocesan] local district representing multiple schools)
 Library (including library system, library outlet/branch or library consortium as defined under LSTA)
 Consortium Check here if any members of this consortium are ineligible or non-governmental entities)

6 Contact Person's Name Ron Dulay

First, if the Contact Person's Street Address is the same as in Item 4, check this box. If not, please complete the entries for the Street Address below.

b Street Address, P.O. Box, or Routing Number 2700 JUDGE FRAN JAMIESON WAY

City VIERA

State FL Zip Code 32940 6699



Entity Number 127700

Contact Person Ron Dulay

Applicant's Form Identifier Maint-pbx-9

Phone Number 321-633-1000

This information will facilitate the processing of your applications. Please complete all rows that apply to services for which you are requesting discounts. Complete this information on the FIRST Form 471 you file, to encompass this and all other Forms 471 you will file for this funding year. You need not complete this information on subsequent Forms 471. Provide your best estimates for the services ordered across ALL of your Forms 471.

Schools/school districts complete Item 7. Libraries complete Item 8. Consortia complete Item 7 and/or Item 8.

Block 2: Impact of Services Ordered on Schools

IF THIS APPLICATION INCLUDES SCHOOLS...	BEFORE ORDER	AFTER ORDER
7a Number of students to be served		1138
NO DATA		

Block 3: Impact of Services Ordered on Libraries

NOT APPLICABLE AS THIS APPLICATION IS FOR DISTRICT

Worksheet A No: 750813 **Student Count:** 1138
Weighted Product (Sum. Column 8): 1024.2 **Shared Discount:** 90%

1. School Name: CAMBRIDGE ELEMENTARY SCHOOL
2. Entity Number: 36200 **NCES:** 12 00150 00093
3. Rural/Urban: Urban
4. Student Count: 607 **5. NSLP Students:** 489 **6. NSLP Students/Students:** 80.560%
7. Discount: 90% **8. Weighted Product:** 546.3
9. Pre-K/Adult Ed/Juv: N **10. Alt Disc Mech:** N

1. School Name: ENDEAVOUR ELEM MAGNET SCH
2. Entity Number: 36198 **NCES:** 12 00150 00094
3. Rural/Urban: Urban
4. Student Count: 531 **5. NSLP Students:** 486 **6. NSLP Students/Students:** 91.525%
7. Discount: 90% **8. Weighted Product:** 477.9
9. Pre-K/Adult Ed/Juv: N **10. Alt Disc Mech:** N

Block 5: Discount Funding Request(s)

FRN: 1425124 FCDL Date: 08/15/2006	
10. Original FRN:	
11. Category of Service: Basic Maintenance of Internal Connections	12. 470 Application Number: 284750000546384
13. SPIN: 143010121	14. Service Provider Name: Brevard Business Telephone Systems, Inc.
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: 012506
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 11/18/2005	18. Contract Award Date: 02/10/2006
19a. Service Start Date: 07/01/2006	19b. Service End Date:

20. Contract Expiration Date: 06/30/2007	
21. Attachment #: pbx9	22. Block 4 Worksheet No.: 750813
23a. Monthly Charges: \$450.85	23b. Ineligible monthly amt.: \$.00
23c. Eligible monthly amt.: \$450.85	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$5,410.20	
23f. Annual non-recurring (one-time) charges: \$.00	23g. Ineligible non-recurring amt.: \$.00
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$5,410.20	
23j. % discount (from Block 4): 90	
23k. Funding Commitment Request (23i x 23j): \$4,869.18	

Block 6: Certifications and Signature

Do not write in this area.

Application ID:509122

Entity Number	127700	Applicant's Form Identifier	Maint-pbx-9
Contact Person	Ron Delay	Phone Number	321-633-1000

Block 6: Certifications and Signature

24. I certify that the entities listed in Block 4 of this application are eligible for support because they are: (check one or both)
- a. **Behind Act of 2001, 20 U.S.C. Secs. 7801(18) and (38)**, that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
 - b. libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any schools including, but not limited to elementary, secondary schools, colleges, or universities
25. I certify that the entity I represent or the entities listed on this application have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that the entities I represent or the entities listed in this application have secured access to all of the resources to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. I certify that the Billed Entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

a.	Total funding year pre-discount amount on this Form 471 (Add the entities from Item 23i on all Block 5 Discount Funding Requests.)	\$5,410.20
b.	Total funding commitment request amount on this Form 471 (Add the entities from Items 23K on all Block 5 Discount Funding Requests.)	\$4,869.18
c.	Total applicant non-discount share (Subtract Item 25b from Item 25a.)	\$541.02
d.	Total budgeted amount allocated to resources not eligible for E-rate support	\$12,831,040.98

e. Total amount necessary for the applicant to pay the non-discount share of the services requested on this application AND to secure access to the resources necessary to make effective use of the discounts. (Add Items 25c and 25d.) \$12,831,582.00

f. Check this box if you are receiving any of the funds in Item 25e directly from a service provider listed on any Forms 471 filed by this Billed Entity for this funding year, or if a service provider listed on any of the Forms 471 filed by this Billed Entity for this funding year assisted you in locating funds in Items 25e.

26. I certify that all of the schools and libraries or library consortia listed in Block 4 of this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, and an SLD-certified technology plan approver, prior to the commencement of service. The plans are written at the following level(s):

- a. an individual technology plan for using the services requested in this application; and/or
 b. higher-level technology plan(s) for using the services requested in this application; or
 c. no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.

27. I certify that I posted my Form 470 and (if applicable) made my RFP available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted were carefully considered and the most cost-effective service offering was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.



28. I certify that the entity responsible for selecting the service provider(s) has reviewed all applicable FCC, state, and local procurement/competitive bidding requirements and that the entity or entities listed on this application have complied with them.

29. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the Billed Entity has not received anything of value or a promise of anything of value, other than services and equipment requested under this form, from the service provider(s) or any representative or agent thereof or any consultant in connection with this request for services.

30. I certify that I and the entity(ies) I represent have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. There are signed contracts covering all of the services listed on this Form 471 except for those services provided under non-contracted tariffed or month-to-month arrangements. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

31. I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

32. I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

33. I certify that I am authorized to order telecommunications and other supported services for the eligible entity (ies) listed on this application. I certify that I am authorized to submit this request on behalf of the eligible entity (ies) listed on this application, that I have examined this request, that all of the information on this form is true and correct to the best of my knowledge, that the entities that are receiving discounts pursuant to this application have complied with the terms, conditions and purposes of this program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the

Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under the Title 18 of the United States Code, 18 U.S.C. Sec. 1001 and civil violations of the False Claims Act.

34. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities listed on this application, or any person associated in any way with my entity and/or entities listed on this application, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.
35. I certify that if any of the Funding Requests on this Form 471 are for discounts for products or services that contain both eligible and ineligible components, that I have allocated the cost of the contract to eligible and ineligible companies as required by the Commission's rules at 47 C.F.R. Sec. 54.504(g)(1),(2).
36. I certify that this funding request does not constitute a request for internal connections services, except basic maintenance services, in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. Sec. 54.506(c).
37. I certify that the non-discounted portion of the costs for eligible services will not be paid by the service provider. The pre-discount costs of eligible services features on this Form 471 are net of any rebates or discounts offered by the service provider. I acknowledge that, for the purpose of this rule, the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.

38. Signature of authorized person

39. Signature Date **2/13/06 1:10:51 PM**

The Americans with Disabilities Act, the Individuals with Disabilities Education Act and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities.

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Services Ordered and Certification Form (FCC Form 471) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of any applicable statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, consistent with the Communications Act of 1934, FCC regulations and orders, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law, information provided in or submitted with this form or in response to subsequent inquiries may be disclosed to the public.

If you owe a past due debt to the Federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

**SLD-Form 471
P.O. Box 7026
Lawrence, Kansas 66044-7026**

**For express delivery services or U.S. Postal Service, Return Receipt Requested,
mail this form to:**

**SLD Forms
ATTN: SLD Form 471
3833 Greenway Drive
Lawrence, Kansas 66046
(888) 203-8100**

Print

<< Previous

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BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTES 2 & 3 - Brevard 1425124 ADL 2-9-07



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

February 09, 2007

Richard Larson
eRate Consulting Services, LLC
32 North Beverwyck Road, Suite 4
Lake Hiawatha, NJ 07034

Re: Applicant Name: BREVARD COUNTY SCHOOL DISTRICT
Billed Entity Number: 127700
Form 471 Application Number: 509122
Funding Request Number(s): 1425124
Your Correspondence Dated: October 13, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1425124
Decision on Appeal: **Denied**
Explanation:

- During the appeal review, USAC thoroughly assessed the facts presented in the appeal letter, the relevant documentation on file, and FCC Rules and Procedures before making its determination. Brevard County School District posted Form 470 application number 284750000546384 on October 21, 2005, with an allowable contract date of November 18, 2005; 28 days after the Form posting date. However, a Request for Proposal (RFP) was posted on January 13, 2006 with a due date of February 9, 2006. This due date provided potential bidders with only 27 days to respond to the RFP. Since the RFP was not available for 28 days prior to selecting a vendor, the district is in violation of the competitive bidding requirements of this program. On appeal, you failed to provide evidence that the district has complied with the program's competitive bid requirements, or

that USAC has erred in its initial decision. Consequently, USAC denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Ron Dulay

Richard Larson
eRate Consulting Services, LLC
32 North Beverwyck Road, Suite 4
Lake Hiawatha, NJ 07034

Billed Entity Number: 127700
Form 471 Application Number: 509122
Form 486 Application Number:

BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTE 4 - SLD_step03



Step 3: Open a Competitive Bidding Process (Form 470)

Applicants must file the *Description of Services Requested and Certification Form* (Form 470) to begin the competitive process and must ensure an open and fair competitive bidding process for specific products.

Applicants must file a new Form 470 each funding year for requests for tariffed or month-to-month services and for new contractual services. When the Form 470 is filed, USAC will make it available to interested service providers by posting it to the USAC website.

Applicants **must**:

- | [Describe specific services or functions for support](#)
- | [Identify the correct category of services: telecommunications, Internet access, internal connections, or basic maintenance of internal connections](#)
- | [Identify recipients of services for support](#)
- | [Follow all applicable state and local procurement laws](#)
- | [Wait 28 days after the Form 470 is posted to the USAC website or after public availability of your Request for Proposals \(RFP\), whichever is later, before selecting a vendor or executing a contract \(see Step 4: Select the Most Cost-Effective Service Provider\)](#)

Applicants **may**:

- | [Use RFPs or other solicitation methods tailored to specific needs and circumstances in addition to the required Form 470.](#)

The Form 470 must be completed by the entity that will negotiate for eligible products and services with potential service providers. A service provider that participates in the competitive bidding process as a bidder cannot be involved in the preparation or certification of the entity's Form 470.

A new Form 470 is **not required** if an applicant intends to seek discounts on services provided under a multi-year contract executed under a posted Form 470 in a prior funding year.

Step 2 Develop a Technology Plan

Step 4 Select a Service Provider Process

[Last modified on 1/6/2006](#)

BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTES 6 & 7 - Bishop_Perry_ex_appendices

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Bishop Perry Middle School)	File Nos. SLD-487170, <i>et al.</i>
New Orleans, LA, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 2, 2006

Released: May 19, 2006

By the Commission: Commissioner Copps issuing a separate statement.

I. INTRODUCTION

1. In this Order, we grant 196 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denying funding due to certain clerical or ministerial errors in the application, *i.e.*, a failure to timely file an FCC Form 471, a failure to timely file a certification related to an FCC Form 470, or a failure to comply with minimum processing standards.¹ As explained below, we find that special circumstances exist to justify a waiver of the Commission's rules, and, accordingly, we grant these appeals and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendices, and issue an award or a denial based on a complete review and analysis, no later than 60 days from release of this Order. In addition, we direct USAC to provide all future and pending applicants with a 15-day opportunity to cure any ministerial or clerical errors on their FCC Form 470, FCC Form 471, or associated certifications. We also direct USAC to develop targeted outreach procedures designed to better inform applicants of application procedures.

2. As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors.² We find that the actions we

¹ In this Order, we use the term "appeals" to generically refer to requests for review of decisions, or waivers related to such decisions, issued by the Commission, the Wireline Competition Bureau, or the Administrator. A list of these pleadings is attached as Appendices A-C. One of the appeals is a petition for reconsideration of a Commission order filed by the Information Technology Department of the State of North Dakota.

² *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*

take here to provide relief from these types of errors in the application process 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 actually obtain access to discounted telecommunications and information services.³ In particular, we believe that by directing USAC to modify certain application processing procedures and granting a limited waiver of our application filing rules, we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program as we consider additional steps to reform and improve the E-rate program.⁴ Requiring USAC to take these additional steps will not reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. Indeed, we retain our commitment 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 program participation. We also emphasize that our actions taken in this Order should have minimal effect on the overall federal Universal Service Fund (USF or the Fund), because the monies needed to fund these appeals have already been collected and held in reserve.⁵

II. BACKGROUND

3. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections. The E-rate application process generally begins with a technology assessment and a technology plan.⁶ After developing the technology plan, the applicant must file the FCC Form 470 (FCC Form 470) to request discounted services such as tariffed telecommunications services, month-to-month Internet access, cellular services, or paging services, and any services for which the applicant is seeking a new contract.⁷ The FCC Form 470 must be posted on USAC's schools and libraries division website for at least 28 days.⁸ The applicant must then comply with the Commission's competitive

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*).

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

⁴ *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).

⁵ We estimate that the appeals granted in this Order involve applications for approximately \$68 million in funding for Funding Years 1999-2005. We note that USAC has already reserved approximately \$585 million to fund outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005, dated August 2, 2005. Thus, we determine that the action we take today should have minimal effect on the USF as a whole.

⁶ 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. § 54.504. Applicants seeking discounts only for telecommunications services do not need to develop a technology plan. See *Request for Review of the Decision of the 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 (2001). In August, 2004, the Commission revised its rules concerning technology plans. See *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15826-30, paras. 51-63. See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15826-30, paras. 51-63 (2004) (*Schools and Libraries Fifth Report and Order*).

⁷ If the technology plan has not been approved when the applicant files the Form 470, the applicant must certify that it understands that the technology plan must be approved prior to commencement of service. 47 C.F.R. § 54.504(b)(2)(vii).

⁸ 47 C.F.R. § 54.504(b)(4).

bidding requirements set forth in sections 54.504 and 54.511(a) of the Commission's rules.⁹ The applicant then files the FCC Form 471 (FCC Form 471), after entering into agreements for eligible services.¹⁰ Section 54.507 of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.¹¹ Under the Commission's rules, USAC implements an initial filing period, or filing window, for the FCC Form 471 applications that treats all schools and libraries filings within that period as if their applications were simultaneously received.¹²

4. The Commission has vested in USAC the responsibility of administering the application process for the schools and libraries universal service support mechanism.¹³ Pursuant to this authority, USAC has established procedures, including "minimum processing standards," to facilitate its efficient review of the thousands of applications requesting funding that it receives.¹⁴ These minimum processing standards are designed to require an applicant to provide at least the minimum data necessary for USAC to initiate review of the application under statutory requirements and Commission rules. When an applicant submits an FCC Form 470 or FCC Form 471 application that omits information required by the minimum processing standards, USAC automatically returns the application to the applicant without considering it for discounts under the program, without inquiring into the cause of the omission or without providing the applicant with the opportunity to cure the error.¹⁵ For example, if an applicant failed to answer all blocks 1-6 on the FCC Form 471 or failed to submit a properly signed signature certification, the applicant's FCC Form 471 would be rejected and returned to the applicant, without further consideration.¹⁶

5. The Commission has under consideration various appeals filed by parties that have requested funding for discounted services under the schools and libraries universal service support mechanism.¹⁷ The petitioners request review of decisions, or waivers related to such decisions, issued by

⁹ 47 C.F.R. §§ 54.504, 54.511(a).

¹⁰ This form is to request discounts on those services and it contains the discount calculation worksheet and the discount funding request. The FCC Form 471 must be filed each time a school or library orders telecommunications services, Internet access, or internal connections.

¹¹ 47 C.F.R. §§ 54.507(c).

¹² 47 C.F.R. §§ 54.507(c).

¹³ *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, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

¹⁴ See, e.g., Instructions for Completing the Universal Service Schools and Libraries Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 2002) (FCC Form 471 Instructions) at 6-9.

¹⁵ See, e.g., USAC website, Form 471 Minimum Processing Standards and Filing Requirements for FY 4, <http://www.sl.universalservice.org/reference/471mps.asp> (Minimum Processing Standards).

¹⁶ *Id.* But note, in the *Naperville Order*, the Commission determined that USAC should not return an application without consideration for having omitted information required by USAC's minimum processing standards where: (1) the request for information is a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by USAC through examination of other information included in the application; and (3) the application is otherwise substantially complete. *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032,5037-38, paras. 12-15 (2001) (*Naperville Order*).

¹⁷ See Appendices A-C.

the Commission, the Wireline Competition Bureau, or USAC.¹⁸ The decisions at issue involve the denial of funding based on an applicant's failure to timely file an FCC Form 471, a failure to timely file certifications related to an FCC Form 470, or a failure to comply with minimum processing standards.¹⁹

6. The Commission may waive any provision of its rules on its own motion and for good cause shown.²⁰ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.²¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²² 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.²³

III. DISCUSSION

7. In this item, we consider 196 appeals of decisions denying requests for funding from the schools and libraries universal service support mechanism based on an applicant's failure to timely file an FCC Form 471, a failure to timely file the certifications related to an FCC Form 470, or a failure to comply with minimum processing standards. We consider these three groups of applicants separately below.

8. Generally, the petitioners argue that immaterial clerical, ministerial or procedural errors resulted in rejection of their requests. Some also dispute that an error was made at all. For the reasons discussed below, we waive the relevant Commission rules, and grant all pending appeals pertaining to decisions denying funding due to a failure to comply with minimum processing standards, a failure to timely file an FCC Form 471, or a failure to timely file certifications related to an FCC Form 470, and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the requested services.

9. In many instances here we depart from prior Commission precedent.²⁴ For the reasons described below, however, we find that the departure is warranted and in the public interest. Although we base our decision to grant these requests in part on the fact that many of the rules at issue here are

¹⁸ For purposes of this Order, decisions by both the Schools and Libraries Division and USAC will be collectively referred to as decisions issued by USAC.

¹⁹ See Appendices A-C.

²⁰ 47 C.F.R. §1.3.

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²² *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), *cert. denied*, 409 U.S. 1027 (1972).

²³ *Northeast Cellular*, 897 F.2d at 1166.

²⁴ See, e.g., *Request for Review by St. John's School, Schools and Libraries Universal Service Support Mechanism, Order*, 20 FCC Rcd 8171 (2005); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the national Exchange Carrier Association, Inc., Bruggemeyer Memorial Library, Order*, 14 FCC Rcd 13170 (1999); see also *Naperville Order*, 16 FCC Rcd at 5036 -5037, para. 11 (Although the Commission granted Naperville's request for review, it affirmed that "consistent with the Commission's rule requiring applicants to submit a 'completed' FCC Form 471, SLD's minimum processing standards provide an efficient means to minimize unnecessary administrative costs by reducing the number of substantially incomplete applications that SLD must review and process," and concluded that "it is appropriate for SLD to require the information requested by Item 22[in Form 471], and for SLD to return applications that fail to provide this information in any form.").

procedural, such a decision is in the context of the purposes of section 254 and cannot 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.”²⁵ Because applicants who are eligible for funding will now receive the opportunity for that funding where previously it was denied for minor errors, we believe granting waivers of these rules in these instances, particularly in light of the limited 15-day correction period we impose, will better ensure that universal service support is distributed first to the applicants who are determined by our rules to be most in need, and thus, further the goals of section 254. We caution, however, that even in the context of the schools and libraries program, the waivers here should not be read to mean that applicants will not be required in the future to comply fully with our procedural rules, which are vital to the efficient operation of the E-rate program. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendices and issue an award or a denial based on a complete review and analysis no later than 60 days from release of this Order.

10. *Applications Denied for Failing to Meet the Minimum Processing Standards.* Sixty-three applicants were denied funding for failing to meet USAC’s minimum processing standards.²⁶ Some of these appeals involved clerical errors on the part of petitioners who inadvertently left portions of the FCC Form 470 or FCC Form 471 blank or made minor errors while completing the form.²⁷ Some petitioners

²⁵ See 47 U.S.C. § 254(h).

²⁶ See Appendix C. We estimate that these 63 appeals involve applications for approximately \$34 million in funding for Funding Years 1999-2005 and note that these funds have already been collected and held in reserve. Also covered in this Order is one application that does not technically involve a minimum processing error. Alexander City Schools discovered it had incorrectly requested a lesser amount of money than it needed. Even though it promptly notified USAC of its error – within nine days – USAC found that because the correction was made after the close of the filing window, USAC could not correct the amount of funding. See Request for Review by Alexander City Schools.

²⁷ Request for Review by Alexander City Schools; Request for Review by Athens City Schools; Request for Review by Bay St. Louis-Waveland School District; Request for Review of Bucksport School Department; Request for Review of Calumet City School District No. 155; Request for Review of Clovis Unified School District; Request for Review and Waiver of Colegio San Antonio; Request for Review of Colton School District #53; Request for Review of Cooperative Educational Service Agency #12; Request for Review of Creighton School District; Request for Review of Elsa Public Library; Request for Review of Emery Unified School District; Request for Review of Fairfax County Public Schools; Request for Review of Forsyth County Public Library; Request for Review of Franklin Lakes School District; Request for Review of French Camp Academy; Request for Review of Henderson County Public Library; Request for Review of Hood River County School District; Request for Review of Incarnation School; Request for Review of Jackson District Library; Request for Review of Lawrence County School District; Request for Review of Leary Independent School District; Request for Review of Mabton School District 120; Request for Review of Marshfield Public Schools; Request for Review of Maumee City School District; Request for Review of McKittrick School District; Request for Review of Memphis City Schools; Request for Review of Mililani-Mauka Elementary School; Request for Review of Northampton Public Schools; Request for Waiver of Radford City Schools; Request for Review of Rangeley Public Library; Request for Review of Richards Independent Schools; Request for Review of Richford High School; Request for Review of Santa Cruz Catholic School; Request for Review of Sevier County Library; Request for Review of St. Joseph the Carpenter Schools; Request for Review of St. Lawrence Catholic School; Request for Review of St. Mary’s Academy; Request for Review of Suffolk Cooperative Library System; Request for Review of Sweetser; Request for Review of Teton County Library; Request for Review and Waiver of Toledo Academy of Learning; Request for Review of Unger Memorial Library; Request for Review of Upper Adams School District; Request for Review of Vidalia City School District; Request for Review of Volusia County Schools; Request for Review of West Genesee Central School District; Petition for Reconsideration of City of Newport News; Application for Review of Des Moines Public Schools; Petition for Reconsideration of King and Queen County Public Schools.

experienced technical problems, either with their own equipment or while interfacing with USAC's electronic filing mechanism, and failed to properly file electronically.²⁸ Other petitioners used outdated USAC forms.²⁹ Some other petitioners claim that the rules and instructions for filing an FCC Form 470 or FCC Form 471 are vague and unclear and that the resulting misunderstandings led to minor mistakes on their applications.³⁰ Finally, others maintain that they did not violate the minimum processing standards at all.³¹

11. Based on the facts and circumstances of these specific cases, we find that good cause exists to waive the minimum processing standards established by USAC. Minimum processing standards are necessary to ensure the efficient review of the thousands of applications requesting funding that USAC receives. In these circumstances, applicants committed minor errors in filling out their application forms. For example, among other problems, applicants inadvertently forgot to fill in a box, had computer problems, used an outdated form that requests primarily the same information as the current one, or misread the instructions. We do not believe that such minor mistakes warrant the complete rejection of each of these applicants' E-rate applications, especially given the requirements of the program and the thousands of applications filed each year.³² Importantly, applicants' errors could not have resulted in an advantage for them in the processing of their application. That is, the applicants' mistakes, if not caught by USAC, could not have resulted in the applicant receiving more funding than it was entitled to. In addition, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that the denial of funding requests inflicts undue hardship on the applicants. In these cases, we find that the applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest.³³ We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

12. *Applications Denied for Filing Outside the FCC Form 471 Filing Window.* We also have before us for consideration 103 appeals of USAC decisions that denied funding for applications that were filed outside of the FCC Form 471 filing window.³⁴ Some petitioners maintain that they submitted the

²⁸ Request for Review of Burnt Hills-Ballston Lake Central School District; Request for Review of West Sioux Community School District.

²⁹ Request for Review by Perrysburg Exempt Village School; Request for Review by Lawrence County School District; Request for Review by Maumee City School District; Request for Review of Maine School Administrative District No. 36; Request for Review of Moencopi Day School.

³⁰ Request for Review of City of Boston; Request for Review of Department of Neighborhood Development; Request for Review of Tennessee School Boards Association; Application for Review of Paramus School District.

³¹ Request for Review of Biblioteca Electronica de Rio Hondo; Request for Review of Sarah A. Reed Children's Center; Request for Review of South Winneshiek Community School District.

³² The initial application is 14 pages long. See USAC website, Schools and Libraries Universal Service

Description of Services Requested and Certification Form 470, available at <http://www.universalservice.org/res/documents/sl/pdf/470.pdf>.

³³ See 47 U.S.C. § 254(h).

³⁴ See Appendix B. We estimate that these 103 appeals involve applications for approximately \$30 million in funding for Funding Years 1999-2005, and note that these funds have already been collected and held in reserve. In the case of Fairfax School District R3, Minnesota Transition School, Minnewaska Area Schools, Our Lady of The Lake School, and St. Francis of Assisi School, the applicants had not yet submitted their completed FCC Forms 471 before filing their requests for review with the Commission but anticipated that their forms would be filed outside the FCC Form 471 filing window. See Request for Review of Fairfax School District R3; Request for Waiver of

relevant information on time.³⁵ Given that it is difficult to determine in these cases whether the error was the fault of the applicant, USAC or a third party, we give the applicants the benefit of the doubt. We find that a slight delay in USAC's receipt of the applications in each of these cases does not warrant the complete rejection of each of these applicants' E-rate applications. Therefore, we find that good cause exists to waive section 54.507 of the rules for these applications.³⁶

13. The rest of the petitioners assert a waiver is appropriate for one of two reasons: either someone on the applicants' staff made a mistake or had a family emergency that prevented them from filing on time or the delay in the filing or receipt of the application was due to circumstances out of the applicants' control. Specifically, in the first group, some of these appeals involve applicants whose staff members inadvertently failed to file the application forms in a timely manner.³⁷ Another group of petitioners state that they were unable to comply with the filing deadline due to staff illness or relatives of staff members who were ill.³⁸ Other petitioners claim that the rules and instructions for filing an FCC

Minnesota Transition School; Request for Waiver of Minnewaska Area Schools; Request for Waiver of Our Lady of The Lake School; Request for Waiver of St. Francis of Assisi School.

³⁵ Request for Review of Centerville School District 60-1; Request for Appeal of Colonial Intermediate Unit 20; Request for Review of Derby Public Schools; Request for Review of Ferndale Area School District; Request for Review of Kent City Schools; Request for Review of Mel Blount Youth Home; Request for Review of North Panola School District; Request for Review of Oglala Lakota Technology Consortium; Request for Review and Waiver of Perrysburg Exempt Village School District.

³⁶ See 47 C.F.R. § 54.507(c).

³⁷ Request for Waiver of Assabet Valley Regional Vocational School District; Request for Review of Barnwell County School District 45; Request for Review of Bath County School District; Request Waiver of Beavertown Community Library; Request for Review of Brown County School Corporation; Request for Review of Caruthers Unified School District; Request for Review of Central Catholic High School; Application for Review of Chawanakee Joint Elementary School District; Request for Review of Clearwater Memorial Library; Request for Waiver of Clinton County Board of Education; Request for Review of Coahoma County Public Schools; Requests for Review of Consorcio de Escuelas y Bibliotecas; Request for Review and Waiver of CPC Behavioral Healthcare; Request for Review of Delta County School District; Request for Review of Fairfax School District R3; Request for Review of Germantown School District; Request for Waiver of Hawaii State Public Library; Petitioner for Reconsideration of High Bridge Board of Education; Request for Waiver of Holmes District School Board; Request for Review of Hubbard Independent School District; Request for Waiver of Indian Oasis Baboquivari District 40; Request for Waiver of Island Trees Public Library; Request for Waiver of Jefferson School District; Request for Review of Los Alamitos Unified School District; Request for Review of Madera Unified School District; Request for Review of Malone Independent School District; Request for Waiver of McClure Community Library; Request for Waiver of Middleburg Community Library; Request for Waiver of Minnesota Transition School; Request for Waiver of Minnewaska Area Schools; Request for Review of Montfort & Allie B. Jones Memorial Library; Request for Waiver of Mount Ayr Community School District; Request for Waiver of Mount Saint John School; Request for Waiver of Mt. Carroll Township Public Library; Request for Review of Our Lady of Refuge; Request for Waiver of Pinon Dormitory; Request for Waiver of Queen of Apostles Catholic School; Request for Waiver of Richmond Public Library; Request for Review of Rylander Memorial School; Request for Waiver of Selinsgrove Community Library; Petitioner for Reconsideration of Siskiyou County Library; Request for Review of Southeast Delco School District; Request for Review of Southeastern Libraries Cooperating; Request for Review of St. Clement's Regional Catholic School; Request for Review of St. Elizabeth Interparochial School; Request for Waiver of St. Francis of Assisi School; Request for Waiver of SuperNet Consortium; Request for Waiver of Tiverton School Department; Request for Waiver Wabash Valley Educational Center; Request for Review of Wallington Public Schools; Request for Waiver of Walnut Community School District; Request for Waiver of Washington Local School District; Request for Waiver of Westside Holistic Family Services; Request for Review of Whitfield County School District; Request for Waiver of Wilkinson County School District; Request for Review of Wilson Memorial Library.

³⁸ Request for Waiver of Augusta County Library; Request for Review of Bonnie Brae Educational Center School; Request for Review of Garvey School District; Request for Waiver of Gaston County School District; Request for

Form 471 are vague and unclear and that the resulting misunderstandings led to forms being filed after the filing window.³⁹

14. Based on the facts and circumstances of these specific cases, we find that good cause exists to waive the deadline for filing the FCC Form 471 found in section 54.507 of the Commission's rules.⁴⁰ Under Bureau precedent deadlines have been strictly enforced for the E-rate program,⁴¹ including those pertaining to the FCC Form 471. We nevertheless find that good cause exists to waive the deadline in these cases. Generally, these applicants claim that staff mistakes or confusion resulted in the late filing of their FCC Form 471s. We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts. Even when a school official has learned how to correctly navigate the application process, unexpected illnesses or other family emergencies can result in the only official who knows the process being unavailable to complete the application on time. Given that the violation at issue is procedural, not substantive, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants. In these cases, the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.⁴² We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

15. The second group of petitioners failed to file an FCC Form 471 in a timely manner due to circumstances beyond their control, such as school reorganizations or inclement weather.⁴³ Some petitioners state that technical problems, either with their own equipment or while interfacing with USAC's electronic filing mechanism, prevented the FCC Form 471s from being timely filed.⁴⁴ Other

Waiver Millennium Community School; Request for Waiver of Northwest Institute for Contemporary Learning, Inc.; Request for Waiver of St. Mary's School; Petition for Reconsideration of Neches Independent School District; Request for Waiver of Unadilla Community School.

³⁹ Request for Waiver of Blackwell Public Schools; Request for Waiver of Brooklyn Jesuit Prep; Request for Review of Cecil County Public Schools; Request for Review of Colleton County School District; Request for Review of Jefferson City School District; Request for Review of Laporte School District 306; Request for Waiver of Nativity Mission School; Request for Review of Pierce City School District R6; Request for Waiver of St. Ignatius Academy.

⁴⁰ See 47 C.F.R. § 54.507(c).

⁴¹ See, e.g., *Request for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 7383, 7389, para. 13 (Wireline Comp. Bur. 2002) (*North Dakota Order*); *Request for Review by Wilmington Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-254818, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 12069, 12071, paras. 7-8 (Wireline Comp. Bur. 2002) (*Wilmington Public Schools Order*); *Request for Review by South Barber Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-158897, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 18435, 18437-38, para. 7 (Com. Car. Bur. 2001) (*South Barber Order*).

⁴² See 47 U.S.C. § 254(h).

⁴³ Request for Waiver of Design and Engineering Services; Request for Waiver of Nelson County Public Schools; Request for Waiver of Our Lady of the Lake School.

⁴⁴ Request for Waiver of A.C.E. Charter High School; Request for Review of American School for the Deaf; Request for Waiver of Associated Marine Institutes, Inc.; Request for Review of Clinton Public Schools; Request

petitioners claim that they attempted to mail their FCC Form 471s on time but that problems with a third-party carrier prevented the application from arriving in a timely manner.⁴⁵

16. Based on the facts and circumstances of these specific cases, we find that good cause exists to waive the deadline for filing the FCC Form 471 found in section 54.507(c) of the Commission's rules.⁴⁶ Under Bureau precedent, deadlines have been strictly enforced for the E-rate program,⁴⁷ including those pertaining to the FCC Form 471. We nevertheless find that good cause exists to waive the deadline in these cases. Generally, these applicants claim that problems with third parties or circumstances outside their control resulted in the late filing of their FCC Form 471s. We find that, given that the violation at issue is procedural, not substantive, a complete rejection of each of these applications is not warranted, especially given that the error in these cases is not the fault of the applicants. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants. In these cases, the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.⁴⁸ We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

17. Applications Denied for Failing to Certify FCC Form 470. We also have before us for consideration 29 appeals of USAC decisions that denied funding for applications because their FCC Forms 470 were not certified or not certified before the close of the filing window.⁴⁹ Some of these appeals involve applicants whose staff members inadvertently failed to file the certification before the filing window closed.⁵⁰ Some petitioners state that technical problems, either with their own equipment or while interfacing with USAC's electronic filing mechanism, prevented the FCC Forms 470 from being certified.⁵¹ Other petitioners claim that they attempted to mail their FCC Form 470s certifications but that

for Waiver of Howard County School District; Requests for Waiver of Jemez Mountain School District; Request for Waiver of Leggett Valley Unified School District; Request for Review of Maine School Administrative District #36; Request for Review of Meriwether County School System; Request for Review of North East Independent School District; Request for Review of Saint John Grammar School; Request for Review of Trinity Christian School; Request for Review of Watson School District #56.

⁴⁵ Request for Waiver of Las Vegas City Schools; Request for Review of Loogootee Community School Corporation.

⁴⁶ See 47 C.F.R. § 54.507(c).

⁴⁷ See, e.g., *North Dakota Order*, 17 FCC Rcd at 7389, para. 13; *Wilmington Public Schools Order*, 17 FCC Rcd at 12071, paras. 7-8; *South Barber Order*, 16 FCC Rcd at 18437-38, para. 7.

⁴⁸ See 47 U.S.C. § 254(h).

⁴⁹ We estimate that these 29 appeals involve applications for approximately \$4 million in funding for Funding Years 1999-2005, and note that these funds have already been collected and held in reserve.

⁵⁰ Request for Waiver of Bishop Perry Middle School; Request for Review of Canby School District 891; Request for Review of Candler County Board of Education; Request for Review of Cassopolis Public School; Request for Review of Construction Careers Center; Request for Review of Dunmore School District; Request for Review of Fluvanna County School District; Request for Review of Interstate 35 Community School District; Request for Review of Lydia Bruun Woods Memorial Library; Request for Review of Mabton School District 120; Request for Review of New York State Office of Children & Family Services; Request for Review of Proctor Public Schools; Request for Review of Weld County School District Six.

⁵¹ Request for Review of Fort Atkinson School District; Request for Waiver of Northwestern Local School District; Request for Review of Tewksbury Public Schools; Request for Review of Unified School District 443 Information Technologies Services; Request for Review of Weld County School District Re-3(J).

the FCC Form 470 was either lost by a third-party carrier or USAC.⁵² Still other petitioners maintain that they complied with program rules.⁵³

18. Based on the facts and circumstances of these specific cases, we find that good cause exists to waive the requirement that the certification be filed with FCC Form 470 for these applicants. Our rules require that applicants certify that certain eligibility and program requirements are met.⁵⁴ Specifically, the certifications include attestations that applicants have a current technology plan, if applicable; that they will conduct the competitive bidding process in accordance with Commission rules; that the applicant is an eligible school or library or consortium; that the funding will be used for educational purposes; that the applicant has not received anything of value from the service provider, other than the requested services, in connection with the request for services; that applicants have the necessary resources to use the services purchased effectively; that the signatory has the authority to submit the request on behalf of the applicant; that the applicant has complied with applicable federal, state and local procurement laws and that violations of the rules may result in suspension or debarment from the program.⁵⁵ These certifications on the FCC Form 470 are important to maintain the integrity of the E-rate program and are necessary to ensure that only eligible entities receive support under the program.

19. We find, however, that a missing certification does not constitute a substantive violation, but a procedural one. We emphasize that these applicants still must file the certifications, even though they are late, for their applications to be processed by USAC. The question here is one of timing. USAC denied these applications not because the applicants refused to sign the certification, but because it was not received by USAC by the filing deadline, which meant that the applications were incomplete. Many of the applicants thought they had complied with the requirements, but due to computer error or other third-party errors, the certifications did not reach USAC.

20. While the Bureau has enforced existing filing deadlines for the E-rate program,⁵⁶ we find that good cause exists to waive the procedural deadline in these cases. We find that given that the violation at issue is procedural, not substantive, we find that a complete rejection of each of these applications is not warranted, especially given that the error in these cases is not the fault of the applicants. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements revealed by the record in these matters. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants. In these cases, the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.⁵⁷ We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

⁵² Request for Review of Cook County School District 130; Request for Waiver of Creighton Community Public Schools; Request for Review of Gladwin County Library; Request for Review of Tamaroa Public School District #5; Request for Review of Welch Independent School District 17; Request for Review of Yeshiva Ktana of Passaic.

⁵³ Request for Review of Goose Creek Consolidated Independent School District; Request for Review of Morley-Stanwood Community School District; Request for Review of Sibley East Independent School District #2310; Request for Review of Temple Terrace Public Library.

⁵⁴ 47 C.F.R. § 54.504(b).

⁵⁵ *Id.*

⁵⁶ See, e.g., *North Dakota Order*, 17 FCC Rcd at 7389, para. 13; *Wilmington Public Schools Order*, 17 FCC Rcd at 12071, paras. 7-8; *South Barber Order*, 16 FCC Rcd at 18437-38, para. 7.

⁵⁷ See 47 U.S.C. § 254(h).

21. *North Dakota Petition for Reconsideration.* As part of this decision, we also grant a Petition for Reconsideration of an Order filed by the Information Technology Department of the State of North Dakota.⁵⁸ North Dakota mailed its FCC Form 471 certification after the deadline, but asserts that it did not understand when it needed to mail the certification after filing the application electronically.⁵⁹ In *North Dakota*, the Commission rejected North Dakota's arguments that a waiver of its filing requirements was warranted because of, *inter alia*, the complex nature of the application process and the detrimental effect the denial would have on the public schools and libraries in North Dakota.⁶⁰ The Commission stated that "the size and complexity of the application" did not establish good cause to waive the Commission's rules, and reiterated that all applicants are subject to the same filing rules, which are necessary for the program to be administered in an efficient and equitable basis.⁶¹

22. On reconsideration, we find that good cause exists to waive the deadline for filing the FCC Form 471. We now believe that, consistent with our reasoning above, a procedural violation should not have resulted in the rejection in North Dakota's entire application. Contrary to our earlier ruling, we note that our waiver standard allows us to consider hardship when analyzing whether particular facts meet the standard. We find here that denial of funding in this case would inflict undue hardship on the applicant. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements. Furthermore, we find that in this case, the applicant has demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.⁶² For these reasons, we find that a waiver of our filing requirements is warranted, and we grant the Petition for Reconsideration filed by the Information Technology Department of the State of North Dakota.

23. *Additional Processing Directives for USAC.* As of the effective date of this Order, we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. USAC shall also inform applications promptly in writing of any missing or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or refile their FCC Form 470, FCC Form 471 or associated certifications.⁶³ USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window. The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should be sufficient time to

⁵⁸ *Application for Review of a Decision by the Wireline Competition Bureau, Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Dockets No. 96-45 and 97-21, Order, 18 FCC Rcd 21521 (2003).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*, 18 FCC Rcd at 21525-27, paras. 12, 17-18.

⁶² See 47 U.S.C. § 254(h).

⁶³ Applicants will be presumed to have received notice five days after such notice is postmarked by USAC. USAC, however, shall continue to work beyond the 15 days with applicants attempting in good faith to amend their applications. This 15-day opportunity to refile or amend applications exists only where applicants have attempted to file their FCC Form 470 and FCC Form 471 within the filing window. If applicants miss the filing window entirely, they would need to file a request for waiver of the deadline with the Commission.

correct truly unintentional ministerial and clerical errors.⁶⁴ The opportunity for applicants to amend their filings to cure 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 in which it will have the greatest impact for the most students. Furthermore, the opportunity to amend the application will improve the efficiency of the schools and libraries program. If USAC helps applicants file correct and complete applications 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 administrative, ministerial, and clerical errors on applications will improve the administration of fund.

24. To complement this effort, USAC shall also develop a more targeted outreach program and educational efforts to inform and enlighten applicants on the various application requirements, including the application and certification deadlines, in an attempt to reduce these types of errors. We expect that the additional outreach and educational efforts will better assist E-rate applicants in meeting the program's requirements. Similarly, USAC shall develop a targeted outreach program designed to identify schools and libraries that have timely posted an FCC Form 470 on USAC's website but have failed to file the associated FCC Form 470 certification. USAC should also notify applicants that have filed an FCC Form 470, but have failed to file an FCC Form 471 or its certification by the close of the filing window. We believe such an outreach program will increase awareness of the filing rules and procedures and will assist applicants in filing complete and correct application. As we noted above, we believe that these changes will improve the overall efficacy of the program.

25. 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 schools and libraries support mechanism.⁶⁵ 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 application procedures, 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.

26. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines and minimum processing standards are necessary for the efficient administration of the E-rate program. Although we grant the 196 subject appeals before us, our action here does not eliminate the minimum processing standards, or the deadlines for filing the FCC Form 470 and FCC Form 471, or certifications to the FCC Form 470 or 471. We continue to require E-rate applicants to submit complete and accurate information to USAC 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 USAC's minimum processing standards, the existing forms and documentation with the associated certifications, USAC's Program Integrity Assurance review procedures, and other processes designed to ensure applicants meet the applicable program requirements.

27. 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, we reserve the right to conduct audits and investigations to determine compliance

⁶⁴ We note that applicants will retain the ability to appeal decisions denying funding requests on the grounds discussed herein.

⁶⁵ *Comprehensive Review NPRM*.

with the 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 our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

28. ACCORDINGLY, IT IS ORDERED that, 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 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the Requests for Review and Requests for Waiver of 47 C.F.R. §§ 54.507(c) and 54.504(b) filed by the petitioners as listed in Appendices A-C ARE GRANTED.

29. IT IS FURTHER ORDERED that, 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 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the Requests for Review and/or Requests for Waiver filed by the petitioners as listed in Appendices A-C ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

30. IT IS FURTHER ORDERED that, 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 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the Petition for Reconsideration filed by the Information Technology Department of the State of North Dakota IS GRANTED and IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

31. IT IS FURTHER ORDERED that, 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, USAC SHALL COMPLETE its review of each remanded application listed in the Appendices and issue an award or a denial based on a complete review and analysis no later than 60 days from release of this Order.

32. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTE 8 - 47cfr1.1-3

Federal Communications Commission

§ 1.2

- 1.9047 Special provisions relating to leases of educational broadband service spectrum.
- 1.9048 Special provisions relating to spectrum leasing arrangements involving licensees in the Public Safety Radio Services.
- 1.9050 Who may sign spectrum leasing notifications and applications.
- 1.9055 Assignment of file numbers to spectrum leasing notifications and applications.
- 1.9060 Amendments, waivers, and dismissals affecting spectrum leasing notifications and applications.
- 1.9080 Private commons.

Subpart Y—International Bureau Filing System

- 1.10000 What is the purpose of these rules?
- 1.10001 Definitions.
- 1.10002 What happens if the rules conflict?
- 1.10003 When can I start operating?
- 1.10004 What am I allowed to do if I am approved?
- 1.10005 What is IBFS?
- 1.10006 Is electronic filing mandatory?
- 1.10007 What applications can I file electronically?
- 1.10008 What are IBFS file numbers?
- 1.10009 What are the steps for electronic filing?
- 1.10010 Do I need to send paper copies with my electronic applications?
- 1.10011 Who may sign applications?
- 1.10012 When can I file on IBFS?
- 1.10013 How do I check the status of my application after I file it?
- 1.10014 What happens after officially filing my application?
- 1.10015 Are there exceptions for emergency filings?
- 1.10016 How do I apply for special temporary authority?
- 1.10017 How can I submit additional information?
- 1.10018 May I amend my application?

Subpart Z—Communications Assistance for Law Enforcement Act

- 1.20000 Purpose.
- 1.20001 Scope.
- 1.20002 Definitions.
- 1.20003 Policies and procedures for employee supervision and control.
- 1.20004 Maintaining secure and accurate records.
- 1.20005 Submission of policies and procedures and Commission review.
- 1.20006 Assistance capability requirements.
- 1.20007 Additional assistance capability requirements for wireline, cellular, and PCS telecommunications carriers.
- 1.20008 Penalties.

APPENDIX A TO PART 1—A PLAN OF COOPERATIVE PROCEDURE IN MATTERS AND CASES UNDER THE PROVISIONS OF SECTION 410 OF THE COMMUNICATIONS ACT OF 1934

APPENDIX B TO PART 1—NATIONWIDE PROGRAMMATIC AGREEMENT FOR THE COLLOCATION OF WIRELESS ANTENNAS

APPENDIX C TO PART 1—NATIONWIDE PROGRAMMATIC AGREEMENT REGARDING THE SECTION 106 NATIONAL HISTORIC PRESERVATION ACT REVIEW PROCESS

AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

EDITORIAL NOTE: Nomenclature changes to part 1 appear at 63 FR 54077, Oct. 8, 1998.

Subpart A—General Rules of Practice and Procedure

SOURCE: 28 FR 12415, Nov. 22, 1963, unless otherwise noted.

GENERAL

§ 1.1 Proceedings before the Commission.

The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Commission shall, unless specifically prescribed in this part, be such as in the opinion of the Commission will best serve the purposes of such proceedings.

(Sec. 403, 48 Stat. 1094; 47 U.S.C. 403)

§ 1.2 Declaratory rulings.

The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

(5 U.S.C. 554)

§ 1.3

47 CFR Ch. I (10–1–06 Edition)

§ 1.3 Suspension, amendment, or waiver of rules.

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

CROSS REFERENCE: See subpart C of this part for practice and procedure involving rulemaking.

§ 1.4 Computation of time.

(a) *Purpose.* The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions.

(b) *General Rule—Computation of Beginning Date When Action is Initiated by Commission or Staff.* Unless otherwise provided, the first day to be counted when a period of time begins with an action taken by the Commission, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority is the *day after the day* on which public notice of that action is given. See § 1.4(b) (1)–(5) of this section. Unless otherwise provided, all Rules measuring time from the date of the issuance of a Commission document entitled “Public Notice” shall be calculated in accordance with this section. See § 1.4(b)(4) of this section for a description of the “Public Notice” document. Unless otherwise provided in § 1.4 (g) and (h) of this section, it is immaterial whether the first day is a “holiday.” For purposes of this section, the term *public notice* means the date of any of the following events: See § 1.4(e)(1) of this section for definition of “holiday.”

(1) For all documents in notice and comment and non-notice and comment rulemaking proceedings required by the Administrative Procedure Act, 5 U.S.C. 552, 553, to be published in the

FEDERAL REGISTER, including summaries thereof, the date of publication in the FEDERAL REGISTER.

NOTE TO PARAGRAPH (b)(1): Licensing and other adjudicatory decisions with respect to specific parties that may be associated with or contained in rulemaking documents are governed by the provisions of § 1.4(b)(2).

Example 1: A document in a Commission rule making proceeding is published in the FEDERAL REGISTER on Wednesday, May 6, 1987. Public notice commences on Wednesday, May 6, 1987. The first day to be counted in computing the beginning date of a period of time for action in response to the document is Thursday, May 7, 1987, the “day after the day” of public notice.

Example 2: Section 1.429(e) provides that when a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the FEDERAL REGISTER. Section 1.429(f) provides that oppositions to a petition for reconsideration shall be filed within 15 days after public notice of the petition’s filing in the FEDERAL REGISTER. Public notice of the filing of a petition for reconsideration is published in the FEDERAL REGISTER on Wednesday, June 10, 1987. For purposes of computing the filing period for an opposition, the first day to be counted is Thursday, June 11, 1987, which is the day after the date of public notice. Therefore, oppositions to the reconsideration petition must be filed by Thursday, June 25, 1987, 15 days later.

(2) For non-rulemaking documents released by the Commission or staff, including the Commission’s section 271 determinations, 47 U.S.C. 271, the release date.

Example 3: The Chief, Mass Media Bureau, adopts an order on Thursday, April 2, 1987. The text of that order is not released to the public until Friday, April 3, 1987. Public notice of this decision is given on Friday, April 3, 1987. Saturday, April 4, 1987, is the first day to be counted in computing filing periods.

(3) For rule makings of particular applicability, if the rule making document is to be published in the FEDERAL REGISTER and the Commission so states in its decision, the date of public notice will commence on the day of the FEDERAL REGISTER publication date. If the decision fails to specify FEDERAL REGISTER publication, the date of public notice will commence on the release date, even if the document is subsequently published in the FEDERAL REGISTER. See *Declaratory Ruling*, 51 FR 23059 (June 25, 1986).

BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTES 9 & 10 - 897 F2d 1164



Northeast Cellular Telephone Co., L.P. v. F.C.C.A.D.C.,1990.

United States Court of Appeals,District of Columbia Circuit.

NORTHEAST CELLULAR TELEPHONE COMPANY, L.P., et al., Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, Respondent.

Nos. 89-1206, 89-1214.

Argued Feb. 5, 1990.

Decided March 9, 1990.

Rehearing En Banc Denied May 9, 1990.

The Federal Communications Commission issued order granting license to cellular radio lottery winner. Losers petitioned for review. The Court of Appeals, Mikva, Circuit Judge, held that Commission had improperly waived rule requiring licensee to establish financial qualifications, on grounds that one of the owners of licensee was subsidiary of large telephone company with which Commission had considerable experience.

Commission order vacated and remanded.

West Headnotes

Telecommunications 372  **1038**

[372](#) Telecommunications

[372IV](#) Wireless and Mobile Communications

[372k1036](#) Licenses and Authorizations

[372k1038](#) k. Cellular Telephones. [Most](#)

[Cited Cases](#)

(Formerly 372k461.10)

Federal Communications Commission did not properly exercise discretion to waive rule requiring that lottery winners for cellular radio license meet specified financial qualifications, by relying on the fact that one of the owners of proposed licensee was a subsidiary of a major telephone company with substantial resources with which Commission has prior experience; Commission failed to articulate “appropriate general standard” governing waiver on those grounds.

***1164 **142** Petition for Review of an Order of the Federal Communications Commission.

[Alan Y. Naftalin](#), Washington, D.C., with whom [Robert M. Connolly](#), Louisville, Ky., was on the brief, for petitioner, Northeast Cellular Telephone, L.P., in No. 89-1206. [Harold J. Carroll](#) and Susan D. Baer, Boston, Mass., were on the brief, for petitioner, Saco River Cellular, Inc., in No. 89-1214.

[Roberta L. Cook](#), Atty., F.C.C., Washington, D.C., with whom [Robert L. Pettit](#), Gen. Counsel, and [Daniel M. Armstrong](#), Associate Gen. Counsel, F.C.C., Washington, D.C., were on the brief, for respondent.

[Michael B. Barr](#), [Bruce D. Peterson](#), Washington, D.C., and John S. Parks, were on the brief, for intervenor, Portland Cellular Partnership.

Before MIKVA, [EDWARDS](#) and [SILBERMAN](#), Circuit Judges.

Opinion for the Court filed by Circuit Judge MIKVA.MIKVA, Circuit Judge:

This case presents a procedural challenge to an FCC order granting a license to a cellular radio lottery winner, Portland Cellular Partnership (“Port Cell”). The losers***1165 **143** in that lottery, Northeast Cellular Telephone Co. (“Northeast”) and Saco River Cellular, Inc. (“Saco River”), claim that the FCC arbitrarily and capriciously waived the requirement that lottery winners establish their financial qualifications within 30 days of having been selected. We hold that the FCC's waiver decision was arbitrary and capricious because it was not based on any rational waiver policy as required by our decision in [WAIT Radio v. FCC](#), 418 F.2d 1153 (D.C.Cir.1969). Indeed, given the record in this case, we cannot imagine any standard that would have justified a waiver of the filing of Port Cell's financial qualifications. Accordingly, we vacate the waiver and remand the case to the agency.

I. Background

In 1986, the FCC held a lottery for a license to operate cellular radio service in Portland, Maine. Five applicants entered the lottery: Northeast, Saco River,

NYNEX Mobile Communications Company (“NYNEX Mobile”), Community Services Telephone Co. (“Community Services”), and Seacoast Cellular, Inc. (“Seacoast”). Seacoast was tentatively selected as the licensee, with Saco River picked as runner-up.

As a result of a settlement agreement, Seacoast substituted for its own application the application of Portland Cellular Partnership (“Port Cell”) which consisted of itself (42% interest), NYNEX Mobile (48% interest) and Community Service (10% interest). Port Cell's ownership has since been divided equally among NYNEX, Seacoast, and Lewiston-Auburn Cellular.

Under FCC rules, Port Cell was required within 30 days of selection to submit evidence of its financial qualifications to operate the system. *Cellular Further Lottery Reconsideration Order*, 59 Pike and Fischer Rad.Reg.2d 407 (1985). Those rules require the lottery winner to present evidence that the lender has (1) committed to provide all necessary financing; (2) identified sufficient unencumbered funds; (3) assessed the applicant's creditworthiness; and (4) dictated the essential terms of the loan. [47 C.F.R. § 22.917\(b\)\(1\)\(i\) \(1986\)](#). If the selected applicant fails to satisfy these requirements, the applicant is disqualified and the second-place applicant is substituted as the tentative lottery selectee. 59 Pike and Fischer Rad.Reg. at 413.

On July 24, Port Cell tendered a letter of credit from NYNEX Credit Company (“NYNEX Credit”) in satisfaction of the financial qualifications requirement and a balance sheet that estimated Port Cell's costs of construction and operation at \$2.8 million. The letter of credit confirmed that NYNEX was “prepared to make available to [Port Cell] a total credit package of \$3 million.” The letter, however, did not include any evidence that NYNEX Credit had assessed Port Cell's creditworthiness or agreed to any terms or conditions of the financing arrangement.

Saco River and Northeast (the only remaining lottery participants) petitioned the Commission to deny Port Cell's application on two grounds. First, they claimed that Port Cell had failed to demonstrate its financial qualifications because the NYNEX letter did not es-

tablish that the credit package was guaranteed, that the essential terms were set, that NYNEX had assessed Port Cell's creditworthiness, or that NYNEX had sufficient capital. Second, they asserted that the FCC had prejudiced their settlement opportunities by permitting two co-owned applicants-Seacoast and Community Service-to remain in the same lottery.

These claims were denied by the Mobile Services Division of the Commission (“MSD”). [Portland Cellular Partnership](#), 2 FCC Rcd 5586 (1987). Saco River and Northeast filed petitions for review with the FCC, which the Commission also denied. [Portland Cellular Partnership](#), 4 FCC Rcd 2050 (1989). The Commission found that even though Port Cell had failed to comply with the FCC rules with respect to financial qualifications, the Commission would waive those qualifications because strict enforcement was not in the public interest. The Commission found that based on its prior dealings with NYNEX Credit, it was confident that NYNEX met all of the necessary qualifications. It determined that strict compliance would not *1166 **144 serve any interest, and would only result in unnecessary delay. The Commission also rejected the cross-ownership claim.

Northeast and Saco River have appealed both the waiver and cross-ownership decisions. Because we find that the case must be remanded on the basis of the waiver decision, we need not reach the cross-ownership issue.

II. Waiver of Financial Qualifications

There is no question here that Port Cell has failed to comply strictly with regulations requiring that it demonstrate its financial qualifications. The FCC concluded that the NYNEX letter was defective under [§ 22.917\(b\)\(1\)\(i\)](#) because it did not contain the terms of the loan or state that NYNEX had assessed the creditworthiness of the loan applicant. [4 FCC Rcd at 2050](#). The Commission nevertheless concluded that there was good cause to waive the specific requirements of the rule because the Commission knew from its “lengthly [sic] experience” with NYNEX Mobile and from “materials on file in other [FCC] proceedings” that Port Cell was financially capable of constructing and operating its proposed cellular sys-

tem. [Id. at 2051](#).

Apparently, the Commission concluded that because of the relationship between NYNEX Credit and NYNEX Mobile, NYNEX Mobile's role as a general partner in Port Cell, and NYNEX Mobile's proven interest in participating in the cellular industry, it was not unreasonable to assume that the funds were available for Port Cell's venture. From this, the Commission would have the court infer that the FCC's familiarity with NYNEX's credit practices was sufficient to demonstrate that NYNEX had assessed the creditworthiness of the loan applicant and that the loan terms would follow a standard pattern.

The FCC has authority to waive its rules if there is "good cause" to do so. [47 C.F.R. § 1.3](#). The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. [WAIT Radio v. FCC, 418 F.2d 1153, 1159 \(D.C.Cir.1969\)](#). However, as we instructed in *WAIT Radio*, those waivers must be founded upon an "appropriate general standard." We held that "sound administrative procedure contemplates waivers ... granted only pursuant to a relevant standard ... [which is] best expressed in a rule that obviates discriminatory approaches." [418 F.2d at 1159](#).

In remanding *WAIT Radio* to the agency to formulate an acceptable waiver policy, we held that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation. *See also Industrial Broadcasting Co. v. FCC, 437 F.2d 680 (D.C.Cir.1970)* (indicating need for articulation of special circumstances beyond those considered during regular rulemaking).

The FCC purports to have complied with *WAIT Radio* in granting its waiver to Port Cell. Yet, it has not even come close to doing so. The FCC Order concluded that waiver under these circumstances would serve the public interest contemplated by the financial requirements provisions. It reasoned that if there

is "no speculation" as to the financial qualifications of the tentative selectee, strict enforcement will not serve the regulation's purpose of reducing delays in cellular service. [4 FCC Rcd at 2050-51](#).

The FCC's reasoning wholly ignores the second requirement of *WAIT Radio*: It does not articulate any standard by which we can determine the policy underlying its waiver. The FCC's reliance upon a bare conclusion that there is "no speculation" with respect to Port Cell is astounding. The record reveals nothing unique about Port Cell's situation. This is a case where a very experienced applicant that was clearly aware of the rule, submitted two financial showings which patently did not comply with that rule. The only thing unusual about Port Cell is that one of its *1167 **145 partners is universally recognized as fiscally strong and technically qualified. The Commission's recognition of Port Cell's financial qualifications, then, amounts to nothing more than a "we-know-it-when-we-see-it" standard.

In [Airmark Corp. v. FAA, 758 F.2d 685 \(D.C.Cir.1985\)](#), this court vacated several waivers for failure to articulate identifiable standards. The FAA had published rules requiring compliance with five criteria to qualify for an exemption; however, it had granted such exemptions only haphazardly. We ruled that "[e]lementary evenhandedness requires that if all five factors must be met by one petitioner, then all five factors must be met by the next." [Id. at 692](#). The difficulty presented here is even more striking, since the FCC has not simply deviated from exemption standards; it never stated any standards in the first place.

The only factor stated by the FCC that differentiates Port Cell from any other applicant is the FCC's undefined "familiarity" with one of Port Cell's partners and Port Cell's financial backer. Standing alone, this does not even begin to approach a standard for demonstrating that a licensee is "indisputably ... financially qualified" and thus not required to provide a full statement of financial qualifications. Although the FCC purports to have had vast experience with NYNEX in other markets and contexts, the Commission provides no indication of what aspects of that experience are dispositive, or how those aspects re-

late to the financial qualifications of Port Cell. As noted, NYNEX is only a minority partner in Port Cell. Thus, whether NYNEX Mobile or its parent NYNEX have been worthy licensees in other markets would not be sufficient to confirm Port Cell's qualifications. Indeed, taking the Commission at its word, it would seem that any organization most likely could avoid producing financial qualifications by bringing a Bell Operating Company in as a 5% partner.

Under the Commission's blanket statement, future applicants-and this court-have no ability to evaluate the applicability and reasonableness of the Commission's waiver policy. At a minimum, the FCC needed to indicate what information it had about NYNEX Credit's uncommitted assets, NYNEX Credit's practices in evaluating the creditworthiness of loan applicants, the terms it would imply into NYNEX Credit's loan letter based upon its prior experience, and its basis for concluding that NYNEX Credit would commit funds regardless of whether NYNEX Mobile abandoned the partnership. Absent a finding that this information was considered and used in formulating an articulable standard at the time the waiver was granted, the FCC must disqualify Port Cell's application.

Despite the Commission's assurances that there is no speculation involved in its decision to excuse Port Cell from strict compliance, its statement invites nothing but speculation by all other participants in FCC proceedings. Mere conclusory statements as to the unique reputation and experience of Port Cell's lender and minority partner are not sufficient to satisfy the requirements of *WAIT Radio*.

III. Conclusion

We hold that the FCC's decision was arbitrary and capricious because it was not based on any rational waiver policy. The agency failed to state any legitimate basis for granting Port Cell a waiver from the Commission's financial qualifications requirements. Bigness and national reputation are not reasonable standards for a waiver policy, and the Commission indeed eschews such a characterization of its policy. It follows that this waiver reflects an outrageous, unpredictable, and unworkable policy that is susceptible to discriminatory application. Accordingly, the peti-

tion for review is granted, and the Commission's order is vacated and remanded.

So Ordered.

C.A.D.C.,1990.

Northeast Cellular Telephone Co., L.P. v. F.C.C.
897 F.2d 1164, 67 Rad. Reg. 2d (P & F) 761, 283
U.S.App.D.C. 142

END OF DOCUMENT

BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTE 11 - Brevard Appeal FRN 1425124 10-13-06

BREVARD COUNTY SCHOOL DISTRICT
2700 Judge Fran Jamieson Way
Viera, FL 32940

October 13, 2006

Letter of Appeal

Schools and Libraries Division – Correspondence Unit
P.O. Box 902
100 South Jefferson Road
Whippany, NJ 07981

Re: Appeal of Funding Commitment Decision Letters Issued on August 15, 2006

Authorized person who can best discuss this Appeal with you

Richard Larson
eRate Consulting Services, LLC
32 North Beverwyck Road, Suite 4
Lake Hlawatha, NJ 07034
Phone: (888) 249-1661 ext 323
Fax: (866) 534-1584
Email: rlarson@erateconsulting.com (preferred mode of contact)

Application Information

<u>Entity</u>	Brevard County School District
<u>Billed Entity Number</u>	127700
<u>Funding Year</u>	FY9 (2006-2007)
<u>Form 471 Application Number</u>	509122 ¹
<u>Funding Request Number</u>	1425124
<u>Total Funding Commitment Request</u>	\$4,869.18
<u>Document Being Appealed</u>	Funding Commitment Decision Letter (FCDL) dated August 15, 2006 for 471 # 509122 ²

FCDL Actions Being Appealed:

<u>Funding Commitment Decision</u>	"\$0.00 – Contract/RFP Provision" ³
<u>FCDL Explanation</u>	"Documentation provided demonstrates that the referenced RFP was not available for 28 days after the filing of the Form 470." ³

Appeal:

We request the Schools and Libraries Division reverse its decision to deny funding for FRN 1425124 and approve the requested commitment of \$4,869.18, because an error was made in the review process. Brevard County School District (Brevard) issued the RFP⁴ for the

¹ FCC Form 471 # 509122 funding year 7/1/2006 – 6/30/2007, posted and certified on 2/13/2006 by Brevard County School District.

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ron Dulay, Brevard County School District (dated August 15, 2006) (Funding Commitment Decision Letter).

³ Ibid: p.5

⁴ "Bid #06-035/CH" from School Board of Brevard County Purchasing Department (George "Chip" Harrison), to Bidders On E-Rate Internal Connections, dated January 1, 2006.

services posted on the establishing 470 # 284750000546384⁵ on January 13, 2006; the contract for these services was awarded on February 10, 2006, following the required waiting period of 28 days of January 13 through February 9, 2006.

The RFP is dated January 13, 2006, and states that "bids will be received in the Office of Purchasing Services up until, but no later than: 2:00 p.m., February 9, 2006."⁶ The RFP was posted to the DemandStar web site and broadcast on January 13, 2006.⁷

Two documents may have misled the reviewers as to the correct posting date of this RFP:

1. An email from Ron Dulay,⁸ the e-rate contact person and Brevard's District Network Engineer/Technology Coordinator which stated that the posting date of the RFP on the DemandStar web site was January 14, 2006. This was clearly a typographical error, as the posting date of the RFP on the DemandStar web site was January 13, 2006, per documentation from DemandStar.⁷ This email is clearly not an RFP, but only advises the addressees of the public availability of the RFP at an earlier date.
2. An addendum to the RFP on February 6, 2006⁹ which provided all prospective bidders with answers to questions raised by various bidders up to that time. As the addendum clearly states, the receipt date for proposals from prospective bidders is not changed by issuance of this addendum, and remained February 9, 2006.

The Schools & Libraries Division (SLD) web site states that an applicant must "wait 28 days after ... public availability of your Request for Proposals (RFP) ... before selecting a vendor or executing a contract;"¹⁰ however, it does not specify a policy regarding addendums. In discussing the purpose of the 28-day waiting period, the SLD web site states "to ensure a fair and open competition, service providers must be given a reasonable period of time to respond to a request for products and services."¹¹ Part of the process of responding to a request includes questions asked by service providers and answers provided by the applicant. By making this Q and A information available to all potential service providers, Brevard's addendum is clearly aligned with the SLD dictum to "ensure a fair and open competition" and should not in any way harm their funding application.

Without a clear and complete explanation from the USAC reviewers as to the basis of their decision, we cannot be certain if these were the only documents that the reviewer relied upon to deny funding to FRN 1425124. However, in our review of the documents submitted in response to the reviewers' request for information, these are the only ones that we felt might be misinterpreted as supporting this decision to deny funding. We are certain that the information provided above should clarify these documents and demonstrate that Brevard adhered to USAC regulations requiring that an RFP must be posted for 28 days before awarding of the contract.

⁵ FCC Form 470 # 284750000546384 for funding year 7/1/2006 – 6/30/2007, posted and certified on 10/21/2005 by Brevard County School District.

⁶ "Bid #06-035/CH" p.1 (Bid Submittals section).

⁷ Email from Chip Harrison, Contracts Administrator for Brevard County School District Purchasing Services, to Ron Dulay, Brevard County School District Network Engineer/Technology Coordinator, dated January 17, 2006.

⁸ Email from Ron Dulay, Brevard County School District Network Engineer/Technology Coordinator, to several addressees, dated January 17, 2006.

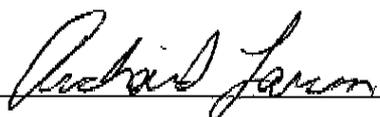
⁹ "Addendum to Bid #06-035/CH" from School Board of Brevard County Purchasing Department (George "Chip" Harrison), to All Bidders, dated February 6, 2006.

¹⁰ Web page "Step 3: Open a Competitive Bidding Process (Form 470) – Schools and Libraries – USAC", URL: <http://www.universalservice.org/sl/applicants/step03>: 3rd paragraph, 5th bullet.

¹¹ Web page "Step 4: Contract Guidance – Schools and Libraries – USAC", URL: <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx>: 2nd paragraph, 1st sentence.

In light of the above, please reverse the decision to deny funding for FRN 1425124 and approve the requested commitment of \$4,869.18. Thank you for your time and consideration.

Authorized signature for this Appeal¹²



Date: 10/13/06

Richard Larson
eRate Consulting Services, LLC
32 North Beverwyck Road, Suite 4
Lake Hiawatha, NJ 07034
Phone: (888) 249-1661 ext 709
Fax: (866) 534-1584
email: rlarson@erateconsulting.com

¹² "Letter of Agency for Funding Year 9" from Leroy Berry, Acting Superintendent, Brevard County School District, authorizing employees of eRate Consulting Services, LLC, to perform e-rate services on behalf of Brevard.

BREVARD COUNTY SCHOOL DISTRICT
BEN 127700
471 # 509122, FRN 1425124
Letter of Appeal
Federal Communications Commission
April 2, 2007

NOTE 12 - FY9_LOA

School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699

Richard A. DiPatri, Ed.D., Superintendent



Letter of Agency for Funding Year: YR9 (2006-2007)

Billed Entity Number: 127700

I hereby authorize eRate Consulting Services, LLC and its employees; Jonathan M. Slaughter, Steve Tenzer, Richard Larson, Carlos Alvarez, Matthew Hetman and Thomas Bowman to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Library Division on behalf of our school district for all eligible services outlined in the most current "Eligible Services List" published by USAC.

I understand that in submitting these forms on our behalf, you are making certifications for our school district. By signing this letter of agency, I make the following certifications:

- (a) I certify that the schools in our district are all schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.
- (b) I certify that the schools in our district have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.
- (c) I certify that all schools in our district are covered, or will be covered at the time funded services are provided, by E-rate approved technology plans (unless discounts are only being requested for basic local and long distance telephone service).
- (d) I certify that our school district is compliant, or will be compliant at the time funded services are provided, with the Children's Internet Protection Act (unless discounts are only being requested for telecommunications services.)
- (e) I certify that the services that our school district purchases using E-rate discounts (as described in the law 47 U.S.C. Sec. 254) will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.
- (f) I certify that the entities eligible for support that I am representing have complied with all applicable state and local laws regarding procurement of services for which support is being sought.
- (g) I certify that our school district has complied with all E-rate program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments.
- (h) I understand that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of the benefits from those services.
- (i) I certify that I am authorized to sign this letter of agency and, to the best of my knowledge, information, and belief, all information provided to Erate Consulting Services, LLC for E-rate submission is true.
- (j) I authorize Erate Consulting Services, LLC to act as our agent in a limited capacity with any service providers to request Customer Service Records. We are NOT granting Erate Consulting, LLC authority to make any changes on our behalf.

I understand that persons who willfully make false statements on E-rate forms or through this letter of agency can be punished by fine or forfeiture under the Communications Act 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001

Signature: _____

[Handwritten Signature]

Date: _____

[Handwritten Date]

Name: _____

Leroy Berry

Title: _____

Acting Superintendent

Phone: (321) 633-1000, ext. 402 • Fax: (321) 633-3432