

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

MAR 29 2007

In the Matter of)) Requests for Review of the Decision of the) Universal Service Administrator by)) Alpaugh Unified School District,) Alpaugh, CA, <i>et al.</i>)) Schools and Libraries Universal Service Support) Mechanism))	File Nos. SLD-523576, <i>et al.</i> CC Docket No. 02-6
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ORDER

Adopted: March 22, 2007

Released: March 28, 2007

By the Commission: Commissioner McDowell issuing a statement.

1. In this Order, we grant 78 appeals of decisions by the Universal Service Administrative Company (USAC) reducing or denying funding from the schools and libraries universal service support mechanism (also known as the E-rate program) on the grounds that applicants failed to respond to USAC's requests for information within the USAC-specified time frame.¹ As explained below, in each case we find good cause to grant the 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 Appendix and issue an award or denial based upon a complete review and analysis no later than 120 days from the release of this Order. In addition, we direct USAC to develop outreach procedures designed to better inform applicants of the additional information that may be needed and to provide applicants with a 15-day opportunity to respond to such request.

2. *Background.* 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.² USAC examines applications for discounted services to ensure that only eligible services are funded, and such scrutiny may result in requests by USAC for additional information from applicants. Absent the applicant providing such additional information, USAC may deny the application for failure to demonstrate that the services in question are eligible for support.

3. Given the volume of applications and other submissions that USAC processes and reviews each year, it is necessary for USAC to establish measures to ensure prompt resolution of applications. One such measure in place is an administrative procedure permitting USAC to request additional

¹ The list of Petitioners is attached in the Appendix. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.501-54.503.

information from applicants.³ USAC requires that a response to all of its requests for additional or clarifying information or documentation be made within seven days of the applicant being contacted, unless the deadline is explicitly extended by USAC.⁴ If this deadline is not met, or the response provided is incomplete, USAC makes a funding determination based on the information it has in its possession.

4. *Discussion.* In this Order, we grant 78 appeals of decisions reducing or denying requests for funding from the E-rate program and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order.⁵ Petitioners' requests for funding were denied or reduced because applicants failed to respond to USAC's requests for information within the specified time frame. Petitioners generally argue that they did not actually receive the requests from USAC for additional information,⁶ that they submitted the requested information to USAC,⁷ that they requested a

³ See *Request for Review by Boone County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. USAC-220067, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22467, 22469, para. 5 (Wireline Comp. Bur. 2002) (Boone County Order); *Request for Review by Henryetta Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. USAC-268075, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 17423, 17424, para. 3 (Wireline Comp. Bur. 2002).

⁴ See SLD website, www.sl.universalservice.org/reference/deadline.asp, (visited December 11, 2006), see also *Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. USAC-220105, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 4520, 4522, para. 6 (Wireline Comp. Bur. 2003).

⁵ See Appendix.

⁶ See *Request for Review by Alice Ward Memorial Library*; *Request for Review by Bais Yaakov High School of Chicago*; *Request for Review by Canon City Schools*; *Request for Review by Cleora Public School*; *Request for Review by Cotulla Independent School District*; *Request for Review by Diboll Independent School District*; *Request for Review by Evangelical Children's Home*; *Request for Review by Fairfax School District*; *Request for Review by Fairland Public Schools*; *Request for Review by Glassboro Public School District*; *Request for Review by Grass Lake Community School District*; *Request for Review by Lubavitch Yeshiva of Minnesota-Wexler Learning Institute*; *Request for Review by Marvin L. Winans Academy of Performing Arts*; *Request for Review by Pleasantville School District*; *Request for Review by Toras Imecha*; *Request for Review by Vicksburg Warren School District*; and *Request for Review by Yeshiva Beth Yitzchok D'Spinka*.

⁷ See *Request for Review by Beaver Area School District*; *Request for Review by Berrien County Schools*; *Request for Review by Boone County School District*; *Request for Review by Brewster Central School District*; *Request for Review by Charleston County School District*; *Request for Review by Cherry Creek Schools*; *Request for Review by Colegio Dr. Roque Diaz*; *Request for Review by Delta-Schoolcraft Intermediate School District*; *Request for Review by Devereux Foundation*; *Request for Review by DINE Southwest High School*; *Request for Review by District of Columbia Public Schools*; *Request for Review by East Cleveland School District*; *Request for Review by Eastern Upper Peninsula Independent School District*; *Request for Review by East Orange Community Charter School*; *Request for Review by Educational Institute Oholei Torah*; *Request for Review by Florence City School District*; *Request for Review by Franklin Township School District*; *Request for Review by Greater Johnstown AVTS*; *Request for Review by Jennings County Schools*; *Request for Review by Lake Erie Educational Computer Association*; *Request for Review by Leominster Public Schools*; *Request for Review by Long Valley Charter School*; *Request for Review by Lynd Public School*; *Request for Review by Madison-Oneida Board of Cooperative Educational Services*; *Request for Review by Madison-Plains Local School District*; *Request for Review by The Mesorah School*; *Request for Review by The Mill School*; *Request for Review by Milltown School District*; *Request for Review by Montezuma-Cortez School District RE-1*; *Request for Review by Oak Hills Local School District*; *Request for Review by Oakland Unified School District*; *Request for Review by Petersburg Independent School District*; *Request for Review by Point Pleasant Schools*; *Request for Review by Rylie Family Faith Academy Consortium*; *Request for Review by Silo Public Schools*; *Request for Review by St. John's County School District*; *Request for Review by Saint Martin de Porres Church*; *Request for Review by Taft School District*; *Request for Review by Wellsville Local School District*; *Request for Review by Winn Parish School District*; and *Request for Review by Youthbuild Albuquerque*.

deferral over the summer,⁸ or that a staffing problem prevented them from submitting the requested information.⁹

5. Balancing the facts and the circumstances of these specific cases as described below, we find that good cause exists to grant these appeals and remand them back to USAC for further processing. Importantly, these appeals involved a procedural error on the part of the Petitioners, not a failure to adhere to a core program requirement or a misuse of funds. As the Commission has noted previously, given that any violations that occurred were procedural, not substantive, we find that the complete rejection of these applications is not warranted.¹⁰ Furthermore, these appeals involved a processing deadline, not a program rule. Although deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.¹¹ We also note that grant of these appeals should have a minimal impact on the Universal Service Fund because the monies needed to fund the underlying applications, should they all be fully funded, have already been collected and held in reserve.¹² We therefore find that good cause exists to grant and remand these appeals. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 120 calendar days from release of this Order.

6. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines are necessary for the efficient administration of the schools and libraries E-rate program. Although we grant the subject appeals before us, our action here does not eliminate USAC's deadlines for processing applications.¹³ In addition, this decision is not intended to reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. We continue to require E-rate applicants to submit, complete and accurate information to USAC

⁸ See Request for Review by Bethlehem Area School District; Request for Review by De Soto Unified School District 232; and Request for Review by University Academy.

⁹ See Request for Review by Alpaugh Unified School District; Request for Review by Crockett Independent School District; Request for Review by Cypress Heights Academy; Request for Review by Griffin Foundation Inc.; Request for Review by Jessamine County Schools; Request for Review by Oberlin Unified School District No. 294; Request for Review by Pelham City Public Schools; Request for Review by Perry Unified School District 343; and Request for Review by Scranton School District.

¹⁰ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5319, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School*).

¹¹ 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.

¹² We estimate that the appeals granted in this Order involve applications for approximately \$45 million in funding for Funding Years 2000-2006. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007 (dated Jan. 31, 2007).

¹³ We note that the Commission has initiated a proceeding to address whether particular deadlines should be modified. *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 05-124, para. 29 (2005) (*Comprehensive Review NPRM*).

in a timely fashion as part of the application review process. However, beginning with applications for funding year 2007, we require USAC in each instance to detail in writing and with specificity to the applicant any information or documentation USAC is seeking. In addition, USAC shall permit applicants to provide the information to USAC within 15 calendar days from the date of receipt of the written notice from USAC that additional information is required.¹⁴

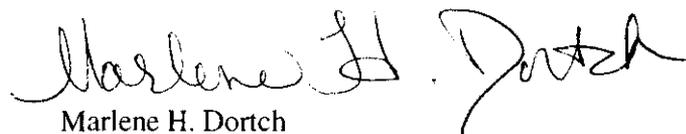
7. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules or 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 process. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

8. 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, the Requests for Review as listed the Appendix ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

9. 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 Appendix and SHALL ISSUE an award or a denial of each application based on a complete review and analysis no later than 120 calendar days from release of this Order.

10. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release, in accordance with section 1.103 of the Commission's rules, 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

¹⁴ Applicants will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall continue, however, to work beyond the 15 days with applicants attempting in good faith to submit the necessary documentation.

APPENDIX

Applicant	Application Number	Funding Year
Alpaugh Unified School District Alpaugh, CA	523576	2006
Alice Ward Memorial Library Canaan, VT	487811	2005
Bais Yaakov High School of Chicago Chicago, IL	234381	2001
Beaver Area School District Beaver, PA	526862	2006
Berrien County School District Nashville, GA	426240	2004
Bethlehem Area School District Bethlehem, PA	532028, 532117, 534228, 534843, 534980, 535090	2006
Bethlehem Area School District Bethlehem, PA	533726, 533860, 533981, 534601, 534316	2006
Bethlehem Area School District Bethlehem PA	534078	2006
Boone County School District Madison, WV	338632	2003
Brewster Central School District Brewster, NY	398144	2004
Canon City School District RE-1 Canon City, CO	422001	2004
Charleston County School District Charleston, SC	399988, 400066, 400095, 400135, 400148, 400166, 400185, 400199, 420054, 420158, 420266, 421719, 421919, 423536, 424838, 429071	2004
Cherry Creek School District 5 Englewood, CO	226427	2001
Cleora Public School Afton, OK	466824	2005
Colegio Dr. Roque Diaz Yabucoa, PR	414245	2004
Cotulla Independent School District Cotulla, TX	320087	2002

Crockett Independent School District Crockett, TX	504311, 506302, 524164, 524195, 527805, 527831, 527849, 527885, 527903, 530689, 532849	2006
Cypress Heights Academy Baton Rouge, LA	533588, 537630, 537700	2006
Delta-Schoolcraft Intermediate School District	538357	2006
De Soto Unified School District 232 De Soto, KS	476682	2005
Devereux Foundation King of Prussia, PA	538789	2006
Diboll Independent School District Diboll, TX	430473	2004
DINE Southwest High School Winslow, AZ	398842	2004
District of Columbia Public Schools Washington, DC	393708	2004
East Cleveland School District, East Cleveland, OH	4233380, 423397	2004
Eastern Upper Peninsula Independent School District Sault St. Marie, MI	471037, 469866	2005
East Orange Community Charter School East Orange, NJ	415781	2004
Educational Institute Oholei Torah Brooklyn, NY	382666	2003
Evangelical Children's Home St. Louis, MO	392392	2004
Fairfax School District Bakersfield, CA	477012	2005
Fairfax School District Bakersfield, CA	478082	2005
Fairfax School District Bakersfield, CA	478152	2005
Fairland Public Schools Fairland, OK	463624	2005
Fairland Public Schools Fairland, OK	466913	2005
Florence City School District Florence, AL	464775	2005
Franklin Township School District Somerset, NJ	474034	2005

Glassboro Public School District Glassboro, NJ	487609	2005
Grass Lake Community School District Tecumseh, MI	514283	2006
Greater Johnstown AVTS Johnstown, PA	533504	2006
Griffin Foundation Inc. Tucson, AZ	486140	2005
Jennings County Schools North Vernon, IN	522029	2005
Jessamine County Schools Nicholasville, KY	498994	2005
Lake Erie Educational Computer Association Elyria, OH	387075	2004
Leominster Public Schools Leominster, MA	372922	2003
Long Valley Charter School Doyle, CA	410086	2004
Lubavitch Yeshiva of Minnesota-Wexler Learning Institute St. Paul, MN	266085	2001
Lynd Public School Lynd, MN	393043	2004
Madison-Oneida Board of Cooperative Educational Services Verona, NY	312009	2002
Madison-Plains Local School District London, OH	524383	2005
Marvin L. Winans Academy of Performing Arts Detroit, MI	500983	2006
Milltown School District Monsey, NY	470851	2005
Montezuma-Cortez School District RE-1 Cortez, CO	414192	2004
Oak Hills Local School District Cincinnati, OH	463594	2005
Oakland Unified School District Novato, CA	263553	2001
Oakland Unified School District	327574, 327579, 327586	2002

Oakland, CA		
Oberlin Unified School District No. 294 Oberlin, KS	460015	2005
Pelham City Public Schools Pelham, GA	362302	2003
Perry Unified School District 343 Perry, KS	532787	2006
Petersburg Independent School District Petersburg, TX	446593	2005
Pleasantville School District Broomall, PA	484579, 485093, 485464	2005
Point Pleasant Schools Point Pleasant, NJ	457647	2005
Rylie Family Faith Academy Consortium Dallas, TX	425796	2004
Saint Martin de Porres Church Philadelphia, PA	359750	2003
Scranton School District Scranton, PA	530269	2006
Silo Public Schools Allen, OK	443976	2005
St. Johns County District St. Augustine, FL	409719, 411916	2004
St. Johns County School District St. Augustine, FL	409805	2004
Taft School District Lockport, IL	501995	2006
The Mesorah School Brooklyn, NY	382513	2003
The Mill School Baltimore, MD	354229	2003
Toras Imecha Lakewood, NJ	404918, 421609	2004
University Academy Lawrence, KS	486799, 486829	2005
Vicksburg Warren School District Vicksburg, MS	265505	2001
Wellsville Local School District Wellsville, OH	512851	2006
Winn Parish School District Winnfield, LA	427753	2004
Yeshiva Beth Yitzchok D'Spinka	262909	2001

Brooklyn, NY		
Youthbuild Albuquerque Philadelphia, PA	524250	2006
Youthbuild Albuquerque Philadelphia, PA	524253	2006

STATEMENT
COMMISSIONER ROBERT M. McDOWELL

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

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

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

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