

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Consolidated Request for Review of)	CC Docket No. 02-6
Decisions of the Universal Service)	
Administrator)	
)	
Caldwell Parish School District)	File No. SLD-289493 (FY2002)
)	
Lincoln Parish School District)	File No. SLD-302051 (FY2002)
)	
Madison Parish School District)	File No. SLD-287193 (FY2002)
)	
Tensas Parish School District)	File No. SLD-288236 (FY2002)
)	
Webster Parish School District)	File No. SLD-292756 (FY2002)

CONSOLIDATED REQUEST FOR REVIEW

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April 9, 2007

TABLE OF CONTENTS

	Page
I. OVERVIEW	1
11. USAC VIOLATED THE PATTERN ANALYSIS REMAND <i>ORDER</i> BY DENYING APPLICATIONS OF UNRELATED SCHOOLS BASED ON AN ALLEGED RULE VIOLATION BY ONE SCHOOL AND ISSUING SUMMARY DENIALS TO NINE SCHOOLS SOLELY BECAUSE APPLICATIONS CONTAIN SIMILAR LANGUAGE.	4
111. THE COMMISSION ALREADY HAS DETERMINED THAT THE SCHOOLS THAT ARE THE SUBJECT OF THIS APRIL CONSOLIDATED APPEAL COMPLIED WITH ALL COMPETITIVE BIDDING RULES	8
IV. RECENT COMMISSION PRECEDENT CONFIRMS THAT JACKSON IS NOT GUILTY OF MASTERMIND-TYPE COMPETITIVE BIDDING VIOLATIONS.	10
V. CONCLUSION	12

SUMMARY

SEND Technologies, LLC / Nexus Systems, Inc. (“SEND”) files this Consolidated Request for Review (“April Consolidated *Appeal*”) seeking reversal of decisions of the Administrator of the Universal Service Administrative Company (“USAC”), denying remanded appeals and funding requests for Caldwell Parish School District (“Caldwell”), Lincoln Parish School District (“Lincoln”), Madison Parish School District (“Madison”), Tensas Parish School District (“Tensas”) and Webster Parish School District (“Webster”) (collectively, the “Schools”) for the Schools and Libraries Universal Service Program (“E-rate Program”) for funding year 2002 (collectively, the “Applications”).¹

USAC’s denials of the Applications that are the subject of this April Consolidated Appeal are part of a series of 10 denials made by USAC using the same justification. USAC alleges that one Louisiana E-rate Program applicant, Jackson Parish School District (“Jackson”), violated the Commission’s competitive bidding rules. Since Jackson’s Application contains similarities to the Applications of eight other Louisiana Schools who chose SEND as their service provider, USAC asserts that all nine Schools must be guilty of competitive bidding violations. USAC denied all 10 Applications, including the Applications of the five Schools that are the subject of this Consolidated Appeal, despite the fact that it found no rule violations with respect to any School, except for the alleged rule violation by Jackson. USAC alleges a *MasterMind*-type rule violation against Jackson. However, review of the administrative record that was provided for Jackson does not reveal any actual rule violations or raise the specter of impermissible service

¹ See Exhibit 1, Summary of Application numbers and FRN numbers. For purposes of this filing, the Applications that are the subject of this *April Consolidated Appeal*, together with the Applications of the Schools that were the subject of prior related appeals, shall be referred to collectively as the “Applications.”

provider involvement as detailed in the Commission's rules, USAC's program rules, or the precedent set in *MasterMind*² and its progeny.

With respect to the prior USAC denials that are part of this series of 10 denials, SEND already filed appeals. On November 20, 2006 SEND filed a Consolidated Request for Review (the "*November Consolidated Appeal*") related to the initial five denials.³ On March 14, 2007 SEND supplemented the November Appeal (the "*March Supplement*") with further information.⁴ The *March Supplement* was necessary because USAC did not provide the administrative record for two of the Schools, Jackson and Franklin Academy, until after the appeal deadline. USAC refused to provide the administrative record for the Applications that are the subject to this *April Consolidated Appeal*.⁵ Given the pattern of denials, and in the interest of conserving Commission time and resources, the contents of the *November Consolidated Appeal* and the *March Supplement* are fully incorporated herein by reference and will generally not be repeated.

All of USAC's denials discussed in the *November Consolidated Appeal*, the *March Supplement* and this *April Consolidated Appeal*, should be overturned for the same reason: USAC is impermissibly using its allegation of a rule violation involving Jackson to deny nine

² *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Board on Universal Service*, Order, 16 FCC Red 4028 (2000) ("*MasterMind*").

³ *Consolidated Request for Review of Decisions of the Universal Service Administrator, Morehouse Parish School District, et al*, Consolidated Request for Review (filed Nov. 20, 2006) ("*November Consolidated Appeal*").

⁴ *See, Consolidated Request for Review of Decisions of the Universal Service Administrator, Morehouse Parish School District, et al*, Supplement to Consolidated Request for Review (filed Mar. 14, 2007) ("*March Supplement*").

⁵ *See* Exhibit 2, Correspondence with USAC Requesting the Administrative Record. The official administrative record for the denials of the Applications, the record on which USAC based its decision and the record the Commission will review when judging the merits of this *April Consolidated Appeal* and USAC's decision-making, was denied to SEND and its counsel. Therefore, we have no ability to ascertain whether or not the record contained any more or less support for USAC's denials. The Further Explanation letters do not allege any actual rule violations by the Schools except for Jackson.

other applications, including the Applications of the Schools that are the subject of this *April Consolidated Appeal*. These denials violate the Commission’s explicit directions to USAC contained in the *Pattern Analysis Remand Order*.⁶ USAC cannot presume a competitive bidding violation for one School based on reviewing another School’s information. Applicant-specific evaluations are required. Moreover, USAC cannot take an alleged rule violation by one School and then, based on innocuous similarities in applications, which have been explained to USAC and the FCC more than **12** times, assign the alleged rule violation to all Schools who chose the same service provider and summarily deny the Applications simply because they contain the same language. In violation of the *Pattern Analysis Remand Order*, that is precisely what USAC has done here and why USAC’s decisions must be overturned.

In addition, with respect to the Schools that are the subject of this Consolidated Appeal, the Commission already made a specific finding that these Schools complied with USAC’s and the Commission’s competitive bidding requirements and satisfied Section 54.504(a) of the Commission’s rules.

Given the multiple rounds of selective review, fact finding missions and appeals to which the Schools and SEND have been subjected by USAC for funding requests beginning in 2002, there is no further information that can be gathered or pled with respect to these Applications. Moreover, given USAC’s pattern of trying to find any conceivable reason to deny these Applications, denials that the Commission has overturned in two separate remand orders,⁷ the

⁶ *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies San Antonio, TX, et al. and Schools and Libraries Universal Service Support Mechanism, Order, 21 FCC Rcd 5348 (2006)* (“*Pattern Analysis Remand Order*”).

⁷ *See Pattern Analysis Remand Order and Requests for Review of the Decision of the Universal Service Administrator by Bienville Parish School Board Acadia, LA, et al.; Schools and Libraries Division, 21 FCC Rcd 1234 (2006)* (“*Public Bid Remand Order*”).

Commission must not send these Applications back to USAC for further consideration. As the administrative record provided in connection with the *November Consolidated Appeal* and the *March Supplement* make clear, USAC is not making decisions based upon the facts, the law and the record. USAC is clearly biased against SEND and these Schools and cannot be trusted to fairly and impartially address the Applications. Accordingly, should the Commission find in favor of the Schools and SEND with respect to the *November Consolidated Appeal*, the *March Supplement* and this *April Consolidated Appeal*, or any part thereof, we ask that the Commission direct USAC to fund the Applications and end the odyssey to which USAC has subjected SEND and the Schools for years.

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Webster Parish School District)	File No. SLD-292756 (FY2002)

To: The Commission

CONSOLIDATED REQUEST FOR REVIEW

Pursuant to Section 54.719(c) of the Commission’s rules,⁸ SEND, together with its counsel, files this *April Consolidated Appeal* seeking reversal of decisions of USAC denying remanded appeals and E-rate funding requests from 2002 for the Schools.’

I. OVERVIEW.

USAC’s denials of the Applications that are the subject of this *April Consolidated Appeal* are **part** of a series of 10 denials made by USAC using the same justification.¹⁰ USAC alleges

⁸ 47 C.F.R. § 54.719(c).

⁹ The Schools together with the schools that were the subject of prior related appeals, including Morehouse Parish School District, Richland Parish School District, Webster Parish School District, Jackson Parish School District and Franklin Academy, shall be referred to collectively as, the “Schools.”

that one Louisiana E-rate Program applicant, Jackson, violated the Commission's competitive bidding rules. Since Jackson's Application contains similarities to the Applications of nine other Louisiana Schools who chose SEND as their service provider, USAC asserts that all nine Schools must be guilty of competitive bidding violations. USAC denied all 10 Applications, including the Applications of the five Schools that are the subject of this Consolidated Appeal, despite the fact that it found no rule violations with respect to any School, except for the alleged rule violation by Jackson. USAC alleges a *MasterMind*-type rule violation against Jackson. However, review of the administrative record that was provided for Jackson does not reveal any actual rule violations or raise the specter of impermissible service provider involvement as detailed in the Commission's rules, USAC's program rules, or the precedent set in *MasterMind* and its progeny.

With respect to the prior USAC denials that are part of this series of 10 denials, SEND already filed appeals. On November 20, 2006 SEND filed a Consolidated Request for Review (the "*November Consolidated Appeal*") related to the initial five denials. On March 14, 2007 SEND supplemented the November Appeal (the "*March Supplement*") with further information. The *March Supplement* was necessary because USAC did not provide the administrative record for two of the Schools, Jackson and Franklin Academy, until after the appeal deadline. USAC refused to provide the administrative record for the Applications that are the subject to this *April Consolidated Appeal*. Given the pattern of denials, and in the interest of conserving Commission time and resources, the contents of the *November Consolidated Appeal* and the *March Supplement* are fully incorporated herein by reference and will generally not be repeated.

¹⁰ For purposes of clarification, 10 Applications were denied involving nine Louisiana Schools. *See* Exhibit 1.

All of USAC's denials discussed in the *November Consolidated Appeal*, the *March Supplement* and this *April Consolidated Appeal*, should be overturned for the same reason: USAC is impermissibly using its allegation of a rule violation involving Jackson to deny nine other applications, including the Applications of the Schools that are the subject of this *April Consolidated Appeal*. These denials violate the Commission's explicit directions to USAC in the *Pattern Analysis Remand Order*. USAC cannot presume a competitive bidding violation for one School based on reviewing another School's information." Applicant-specific evaluations are required.¹² Moreover, USAC cannot take an alleged rule violation by one School and then, based on innocuous similarities in applications, which have been explained to USAC and the FCC more than 12 times, assign the alleged rule violation to all Schools who chose the same service provider and summarily deny the Applications simply because they contain the same language.¹³ In violation of the *Pattern Analysis Remand Order*, that is precisely what USAC has done here and why USAC's decisions must be overturned.

In addition, with respect to the Schools that are the subject of this Consolidated Appeal, the Commission already made a specific finding that these Schools complied with USAC's and the Commission's competitive bidding requirements and satisfied Section 54.504(a) of the Commission's rules.¹⁴ (*See, infra* Section III for a full discussion of the Commission's prior finding.)

Given the multiple rounds of selective review, fact finding missions and appeals to which the Schools and SEND have been subjected by USAC for funding requests beginning in 2002,

¹¹ *Pattern Analysis Remand Order*, ¶6.

¹² *Id.*

¹³ *Id.*, ¶7.

¹⁴ 47 C. F.R. § 54.504(a).

there is no further information that can be gathered or pled with respect to these Applications. Moreover, given USAC's pattern of trying to find any conceivable reason to deny these Applications, denials that the Commission has overturned in two separate remand orders,¹⁵ the Commission must not send these Applications back to USAC for further consideration. As the administrative record provided in connection with the *November Consolidated Appeal* and the *March Supplement* make clear, USAC is not making decisions based upon the facts, the law and the record. USAC is clearly biased against SEND and these Schools and cannot be trusted to fairly and impartially address the Applications.¹⁶ Accordingly, should the Commission find in favor of the Schools and SEND with respect to the *November Consolidated Appeal*, the *March Supplement* and this *April Consolidated Appeal*, or any part thereof, we ask that the Commission direct USAC to fund the Applications and end the odyssey to which USAC has subjected SEND and the Schools for years.

11. USAC VIOLATED THE *PATTERN ANALYSIS REMAND ORDER* BY DENYING APPLICATIONS OF UNRELATED SCHOOLS BASED ON AN ALLEGED RULE VIOLATION BY ONE SCHOOL AND ISSUING SUMMARY DENIALS TO NINE SCHOOLS SOLELY BECAUSE APPLICATIONS CONTAIN SIMILAR LANGUAGE.

The denial reasons issued by USAC to all Schools except for Jackson allege a rule violation by "another applicant" as the basis for denying the Applications of the Schools because of similarities between or among the applications. USAC's denial rationale, as contained in the "Further Explanation of Administrator's Funding Decision" letters, attached hereto as Exhibit 3, states the following:¹⁷

¹⁵ See *Pattern Analysis Remand Order* and *Public Bid Remand Order*.

¹⁶ *November Consolidated Appeal*, p. 5.

¹⁷ One interesting difference in the Further Explanation letters issued to the Schools that are the subject of this *April Consolidated Appeal* as opposed to the Further Explanation letters that precipitated the

- [Y]ou indicated that employees of your entity filled out and submitted the FCC Form 470 **without assistance from a service provider**.
- **Another applicant** whose FCC Form 470 contains identical Summaries of Needs or Services Requested has stated that Send Technologies assisted them in determining what services their entity sought bids for, as well as filling out and submitting the FCC Form 470.¹⁸
- Your response does not explain why your FCC Form 470 *Summary* of Needs or Services Requested contains many of the same entries as other applicants who selected the same service provider.
- This set of entries has been deemed to violate program rules because the service provider inappropriately helped the applicant fill out the form.¹⁹
- Since you have not explained why the documents are similar, containing the same entries as other applications that have been deemed to violate program rules,²⁰ **you have not demonstrated that you did not allow your service provider to participate in the competitive bidding process**. Therefore, the FRN(s) cited above has been denied.

It is clear from the complete record in this matter that USAC is impermissibly using its analysis of Jackson’s facts and circumstances to deny not only the Jackson funding requests, but also the funding requests of eight other Schools for whom USAC has neither found, nor alleged, any actual rule violations.²¹ This violates the Commission’s explicit direction in the *Pattern Analysis Remand Order* that USAC cannot presume a competitive bidding violation for one School based on reviewing another School’s information.²² Applicant-specific evaluations are required, and in order to justify denial of an appeal **and** an underlying Application, the *Pattern Analysis Remand Order* requires that USAC make a finding that each applicant actually violated

November Consolidated Appeal is that USAC does not mention as problematic or a potential rule violation the fact that Mark Stevenson of SEND mailed the FCC Form 470 certification to USAC. Exhibit 3 contains copies of both the Revised Funding Commitment Decision Letters and the Further Explanation of Administrator’s Funding Decision.

¹⁸ The “another applicant” referred to is Jackson.

¹⁹ Note that Jackson is the **only** applicant that USAC alleges received inappropriate help.

²⁰ Only one application, not “applications,” has been deemed to violate program rules.

²¹ *See* the Further Explanation letters for all of the Schools attached at Exhibit 3.

²² *Pattern Analysis Remand Order, 76.*

Commission or Program rules.²³ The denial reasons provided by USAC in the Further Explanations, do not actually allege any rule violations for any of the Schools, but Jackson. For all of the reasons set forth in the *November Consolidated Appeal*,²⁴ and the *March Supplement*,²⁵ which will not be reiterated here, USAC cannot deny the appeals of eight unrelated Schools based on an alleged rule violation by just one School, Jackson.

USAC attempts to link the alleged rule violation of Jackson to the other Schools based on similar “entries” in the Applications.²⁶ USAC’s reasoning is as follows: Jackson received assistance from SEND, your application contains similarities to Jackson’s application, you did not explain why your application contains similar “entries” (even though similarities identified by USAC in the past have been explained to the FCC and USAC multiple times), since you have not explained the similarities, you have not demonstrated that you did not allow a service provider to participate in the competitive bidding process. Therefore, your application is denied.

The Commission cannot allow this USAC reasoning to stand for three reasons. First, neither the *Pattern Analysis Remand Order*, nor the FCC’s rules, nor the program rules, require a School to prove a negative, that a service provider was NOT involved. Yet, that is the standard to which USAC is holding the Schools. USAC denies the Applications because the Schools “have not demonstrated that [they] did not allow [their] service provider to participate in the competitive bidding process.”²⁷ USAC’s analysis makes no sense and is patently unfair. It is not incumbent on the Schools to prove a negative, that the service provider was not involved.

²³ *Pattern Analysis Remand Order*, ¶¶1, 8.

²⁴ *November Consolidated Appeal* pp. 8-17.

²⁵ *March Supplement* pp. 8-10.

²⁶ *See supra*, p. 5, for a recitation of the denial reasons including a reference to the Applications containing the “same entries”.

²⁷ *See* Exhibit 3, Further Explanation letters.

Instead, it is incumbent on **USAC**, per the *Pattern Analysis Remand Order*, to prove impermissible service provider involvement and actual rule violations for each School as the basis of denying E-rate funds.²⁸ **USAC** has not complied with the dictates of the *Pattern Analysis Remand Order* and cannot be allowed to deny federal funding without proof of rule violations. **USAC** has not met its burden.

Second, as addressed in the *November Consolidated Appeal*, and in numerous other prior appeals to **USAC** and the **FCC**, the similarities **USAC** identified in the past, including the School district identifiers, service descriptions and mailing assistance, were easily explained and were not indicative of impermissible service provider involvement.²⁹ None of the similarities amounted to a rule violation, and none of those factors can be used as a justification to deny the Applications. Although **USAC** alleges that the Schools have not explained the similarities among the applications, the Schools have explained why the similarities identified by **USAC** in the past are innocuous and have no relationship to any service provider at least 12 times in the record before **USAC** and the **FCC**.³⁰ Moreover, from the administrative record that was provided by **USAC** with respect to other Louisiana Schools that are caught up in these denials, it is clear that **USAC** did not identify the similar “entries” or ask the Schools to explain the similarities again.³¹ **USAC** is well aware of the innocuous nature of the similarities based on years of appeals and meetings.

²⁸ *Pattern Analysis Remand Order*, ¶1.

²⁹ *November Consolidated Appeal* at pp. 14-17. Specific similarities identified by **USAC** in the past were addressed in appeals to **USAC** and the **FCC**. The Applications of the Schools may contain other general similarities as a result of templates that were developed for use by many Louisiana schools in E-rate trainings that were sanctioned by **USAC**.

³⁰ *See id.*

³¹ *March Supplement* at pp. 3, 5-6

Finally, the *Pattern Analysis Remand Order* specifically directed USAC that a pattern analysis alone, does not justify a finding that an applicant has violated program rules and that USAC should not issue summary denials of requests for funding solely because applications contain similar language.³² Denying the applications of eight Schools for whom USAC did not find any rule violations simply because applications contain similar language, explicitly violates the Commission's instructions to USAC as contained in the *Pattern Analysis Remand Order*.³³ Denials must be based on a finding of a rule violation by each School, not just a pattern analysis and similar language.³⁴

For all of these reasons, and the reasons contained in the *November Consolidated Appeal* and the *March Supplement*, the Commission must reverse the decisions of USAC related to all the Louisiana Schools and fund the disputed applications.³⁵

111. THE COMMISSION ALEADY HAS DETERMINED THAT THE SCHOOLS THAT ARE THE SUBJECT OF THIS APRIL CONSOLIDATED APPEAL COMPLIED WITH ALL COMPETITIVE BIDDING RULES.

There is an unfortunate amount of history related to the processing and repeated denials of the Applications. In late 2003 and early 2004, USAC denied the 2002 Applications of the Schools because, in USAC's estimation, the Schools failed to comply with State of Louisiana Public Bid Law. The Schools appealed the matter to USAC, to no avail, and then appealed the matter to the FCC. The Schools requested that the FCC hold its decision in abeyance until the Attorney General of Louisiana, the proper arbiter of Louisiana state law, could determine whether the Schools complied with Louisiana Public Bid Law. After examination of the facts

³² *Pattern Analysis Remand Order*, ¶7.

³³ *Id.*, ¶8.

³⁴ *Id.*

³⁵ See Exhibit 1 for a listing of all Applications and FRNs that should be eligible for Commission grant.

and the law, the Attorney General of Louisiana agreed with the Schools that the Schools complied with all of the requirements of Louisiana procurement procedures. In granting the appeals of the Schools, the FCC specifically found: “Because all the requests for funding at issue **followed USAC and the Commission’s competitive bidding and regulations**, as well as applicable state laws, as required by program rules, we conclude that Petitioners [the Schools] were in compliance with section 54.504(a) of the Commission’s Rules.”³⁶ USAC was ordered to further consider the Applications consistent with the Commission’s remand order and the findings contained therein.³⁷

The Commission remanded the Applications to USAC on February 3, 2006.³⁸ One year later, on February 8, 2007, USAC denied the Applications a second time alleging, incredibly, failure to comply with the competitive bidding rules based on an alleged violation by an unrelated applicant. This allegation is in direct contradiction of the FCC’s finding in the *Public Bid Remand Order* that the Schools complied with the competitive bidding rules.³⁹ Had USAC, through its additional fact finding, uncovered proof of rule violations by the Schools, then perhaps it would have proved the Commission wrong. In this case, however, USAC has not alleged any rule violations with respect to any of the Schools except for Jackson, and Jackson was not part of the *Public Bid Remand Order*. The Commission’s initial determination about these Applications was correct and USAC’s most recent decisions should be overturned.

³⁶ *Public Bid Remand Order*, ¶6.

³⁷ *Id.*, ¶7.

³⁸ *Id.*

³⁹ *Id.*, ¶6.

IV. RECENT COMMISSION PRECEDENT CONFIRMS THAT JACKSON IS NOT GUILTY OF MASTERMIND-TYPE COMPETITIVE BIDDING VIOLATIONS.

Based on Jackson’s responses to USAC’s pattern analysis questions, we know that an employee of the School was responsible for preparing and filing the relevant Form 470 “with the assistance of Mark Stevenson.” The Jackson School Representative explained that “Jackson Parish was having trouble with preparing the Form” and a SEND representative “volunteered to help”, “asked questions”, and “gave advice.”⁴⁰ The Jackson School Representative entered the required information in the Application form.⁴¹ The Form 470 was posted by Jackson from the “Office of SEND Technology.”⁴² A SEND representative mailed in the Form 470 certification after it was submitted electronically by Jackson to USAC.

Citing *MasterMind* as precedent, USAC asserts that the foregoing assistance offered by SEND to Jackson violated the competitive bidding rules because SEND assisted Jackson in determining services, filling out and submitting its Form **470**. As discussed in the *November Consolidated Appeal*⁴³ and the *March Supplement*,⁴⁴ the assistance provided by SEND to Jackson was permissible under USAC’s and the Commission’s rules, and did not violate USAC’s rules, the Commission’s rules or the precedent set in *MasterMind*. Recent Commission precedent interpreting the *MasterMind* case makes it even more clear that USAC cannot deny Jackson’s application citing *MasterMind* as authority. In a case released just weeks ago,

⁴⁰ *March Supplement* at pp. 6-8 and citations to the administrative record contained therein.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *November Consolidated Appeal* at pp. 12-14.

⁴⁴ *March Supplement* at pp. 10-20.

Approach Learning and Assessment Center Santa Ana, CA, et. al.,⁴⁵ the Commission stated the following:

In the *MasterMind Order*, the Commission observed that the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested. For this reason, the Commission found that when an applicant delegates that power to an entity that also participates in the bidding process as a prospect service provider, the applicant impairs its ability to hold a fair competitive bidding process. Thus, the Commission concluded that an applicant would be in violation of its competitive bidding rules "when a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder."⁴⁶

In Jackson's case, no one from SEND was listed as a contact person on its application, no one from SEND controlled the dissemination of information regarding the service Jackson requested, and Jackson did not delegate its power in the competitive bidding process to SEND. Jackson had questions about how to complete its Form 470 E-rate application, and Send answered those questions in a service provider neutral manner as permitted by the rules. There are no *MasterMind*-like facts or allegations here and USAC has not alleged a violation of any other USAC or Commission rules applicable to the E-rate Program. *MasterMind* clearly cannot be used as the legal justification for denying the application of Jackson.

In the event the Commission determines either that there was a rule violation involving Jackson and the other Schools, or that it should broaden the precedent set in *MasterMind* to prohibit the kind of assistance SEND offered to Jackson, and prohibit the

⁴⁵ *Requests for Review of the Decisions of the Universal Service Administrator by Approach Learning and Assessment Center, Santa Ana, CA, et al.; Schools and Libraries Universal Service Support Mechanism*, Order, File Nos. SLD-140957, *et al.*, CC Docket No. 02-6 (DA 07-1332) (rel. Mar. 23, 2007).

⁴⁶ *Id.*, 77.

similar “entries” among the Applications, then SEND requests a waiver of any such rules on behalf of Jackson and the other Schools. The facts related to the Jackson Application and the other Applications demonstrates that the Schools could not have understood that the assistance Jackson received, and the similar “entries” in Applications, could be used to deny ten Applications of unrelated Schools. Under the circumstances, strict compliance with any rule that would justify denial of the Applications would be inconsistent with the public interest.⁴⁷ If a waiver is necessary, good cause for a waiver has been shown in the *November Consolidated Appeal, March Supplement* and *April Consolidated Appeal*.⁴⁸

V. CONCLUSION

USAC cannot be allowed to deny the Applications of eight unrelated Schools, including the five Schools that are the subject of this *April Consolidated Appeal*, based on an alleged rule violation by one School, Jackson. Even as to Jackson, USAC has failed to meet its burden of proving an actual rule violation based upon the facts and the law. The record evidences that SEND provided Jackson with vendor-neutral assistance which is permitted by the rules. The Commission should expeditiously overturn the series of 10 Application denials by USAC and order funding for the Schools. USAC violated the *Pattern Analysis Remand Order* by failing to find rule violations and impermissible service provider involvement with respect to each School, and summarily denying the Applications of eight Schools simply because their applications contain similar language. USAC’s decisions must be overturned. Should the Commission find in favor of the Schools and SEND with respect to the *November Consolidated Appeal*, the *March*

⁴⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert denied* 409 U.S. 1027 (1972).

⁴⁸ 47 C.F.R. § 1.3.

Supplement and this *April Consolidated Appeal*, or any part thereof, we ask that the Commission direct USAC to fund the Applications and **end** the odyssey to which USAC has subjected SEND and the Schools for years.

Respectfully submitted,

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April 9, 2007

CERTIFICATE OF SERVICE

I, Peter M. Andros, certify on this 9th day of April, 2007, a copy of the foregoing Supplement to Consolidated Request for Review has been served via electronic mail or first class mail, postage pre-paid, to the following:

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