for eligible telecommunications services, Internet access, and internal connections.[4] In accordance with the Commission's rules, the discount available to a particular school or library is determined by indicators of poverty and high relative cost of service.[5] The level of poverty for schools and school districts is measured by the percentage of their student enrollment that is eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism.[6] A school's high-cost status is derived from rules that classify it as urban or rural.[7] The Commission's rules provide a matrix reflecting both the school's urban or rural status and the percentage of its students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.[8] A school's discount rate is then applied to the cost of eligible services requested by the school.[9]

3. Western Heights is a school district which includes elementary schools as well as middle and high schools.[10] A school district calculates its discount by first calculating the discount applicable to each of its member schools and then calculating the weighted average of these discounts, based on the number of students in each school.[11]

4. In its application for year-two funding, Western Heights calculated the discount applicable to its elementary schools by an actual head-count of the number of students in those schools that reported that they were eligible for free or reduced price lunches under NSLP.[12] However, to determine the number of such students in its middle and high schools, Western Heights used the "feeder pattern method" rather than an actual head-count.[13] The "feeder pattern method" estimates the numbers of middle and high school students eligible for NSLP based on the assumption that these schools will have eligibility rates similar to the elementary schools that feed into them.[14] Thus, Western Heights based its reported middle and high school eligibility rates on a student-weighted average of the eligibility rates of its elementary schools.[15] Using this

[4] 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. §§ 54.502, 54.503.

[5] 47 C.F.R. § 54.505(b).

[6] 47 C.F.R. § 54.505(b)(1).

[7] 47 C.F.R. §§ 54.505(b)(3)(i), (ii).

[8] 47 C.F.R. § 54.505(c).

[9] *Id.*.

[10] Request for Review at 1-2.

[11] 47 C.F.R. § 54.505(b)(4).

[12] Request for Review at 2.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 2-3.

method, Western Heights calculated that its middle and high schools were entitled to the maximum 90% discount, and that the district overall was entitled to an 88% discount.[16]

5. On August 10, 1999, SLD issued a Funding Commitment Decision Letter, granting Western Heights' funding requests but assigning an 80% discount rate to the middle school, a 60% rate to the high school and a 78% shared discount to Western Heights as a whole.[17] On August 31, 1999, Western Heights appealed the discounts to the Administrator, submitting documentation that supported Western Heights' calculations and use of the "feeder pattern method."[18] On June 29, 2000, the Administrator denied the appeal, stating that "the shared discount percentage you requested was based on Feeder School method, which is an unacceptable method for E-rate discounts" and that "SLD modified your discount percentage to 78% in accordance with the actual count of students participating in the National School Program."[19] Western Heights then timely filed the instant Request for Review.

6. On review, we find that SLD properly denied Western Heights' request for higher discounts based on the "feeder pattern method." This method is not one of the acceptable methods set out in the Commissions' rules and orders for calculating the discount.[20] In the *Universal Service Order*, the Commission held that schools that do not use a count of students eligible for the national school lunch program could use only the federally-approved alternative mechanisms contained in Title I of the Improving America's Schools Act, and that all of these mechanisms, while looking to other indices of poverty such as participation in tuition scholarship programs, still rely on "actual counts of low-income children."[21] The permissible methods thus do not include the "feeder pattern method," which relies on extrapolation rather than actual counting.[22] Indeed, in the *Universal Service Order*, the Commission considered a comment

The method used by Liberty Hill relies on an "actual count of low-income children."

[16] FCC Form 471, Western Heights School District, filed April 2, 1999.

[17] Letter from Schools and Libraries Division, Universal Service Administrative Co., to Joe Kitchens, Western Heights School District 41, dated August 10, 1999 (Funding Commitment Decision Letter).

[18] Letter of Appeal, from John D. Harrington, Funds for Learning, on behalf of Western Heights School District, to Schools and Libraries Division, filed September 3, 1999.

[19] Letter from Schools and Libraries Division, Universal Service Administrative Co., to Joseph Kitchens, Western Heights School District, dated June 29, 2000, at 1 (Administrator's Decision on Appeal).

[20] *Request For Review by Merced Union High School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-8404, 9605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18803 (Common Carrier Bur. rel. 2000) (*Merced*); *Request for Review by Enterprise City 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-46073, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 6990 (Common Carrier Bur. rel. 1999) (*Enterprise*).

[21] *Federal-State Joint Board on Universal service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9044-46, 9524-25 (1997) (*Universal Service Order*), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000).

[22] *Enterprise* at para. 6.

This is permitted by Liberty Hill's SNP. Tribute Counter Sent in SNP to Elected Municipal Insert pg. 6

specifically suggesting the use of the feeder method to calculate discounts and rejected it.[23] Thus, we find that Western Heights' Request for Review seeking to use this method must be denied. In addition, we reject Western Heights' assertion that this appeal raises a novel issue of policy which must be considered by the full Commission, because as noted above, the Commission has already addressed the issue.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Western Heights School District, Oklahoma City, Oklahoma on July 31, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Common Carrier Bureau

[23] *Universal Service Order* at 9525 (noting with approval a comment that expanding permissible proxies beyond those that have already been adopted could unnecessarily entangle the FCC in endless review and approval processes of many less appropriate schemes.); *see also Enterprise* at para. 6 (noting that "the Commission specifically rejected commenters' suggestions that would have permitted showings, such as the feeder method, that would merely approximate the percentage of low income children in a particular area.") (citing *Universal Service Order*). Western Heights cites to the "long standing practice" of the Department of Education as permitting the use of the feeder method to determine the number of low-income students in a school and urges us to defer to the Department of Education's expertise in this area. Request for Review at 2. However, as indicated, the Commission has already considered such proxy methodologies and rejected them.

Exhibit C

USDA

United States Department of Agriculture
Food and Nutrition Service

Southeast Region

Reply to
Attn. of: SA 9-1

Subject: Policy 210.18-03: Coordinated Review (CRE) Issues and Supplemental Guidance

To: All State NSLP Directors
Southeast Region

This policy letter is to reissue Coordinated Review (CRE) policy issues previously distributed in policy letters NSLP 94-1 and NSLP 95-13. Any changes made to the original memorandum are in **bold**.

The purpose of this memo is to address operational issues that have been raised during CRE reviews, to highlight areas in which the reviews showed common or continuous problems with implementation of program requirements, and to address questions and issues related to the CRE review form and procedures.

S-1 COUNTING THE NUMBER OF STUDENTS ELIGIBLE FOR BENEFITS

The eligible count must be determined by the reviewer independent of the school or SFA total eligible counts. Because this data is used to test the meal count system, students are to be counted in the category that the determining official has assigned, not the correct category if there is a difference. (The purpose of this rule is to allow the reviewer to compare total meal counts by category to the number students the school, e.g. roster, indicated where eligible by category.)

The count at the beginning or end of a month, the monthly average, and the highest count in the month are all acceptable methods for the SFA to obtain their eligible count. The CRE count should be higher, as CRE counts all students who were eligible during the month, even for only one day. This higher count is beneficial to the SFA, not detrimental.

S-2 CERTIFICATION (APPLICATIONS)

SFA's in the Southeast Region do not appear to have major problems with application approval. However, several questions related to determining eligibility required clarification as follows:

61 Forsyth Street, S.W., Room 8T36, Atlanta, GA 30303-3415

FORM FCS-603 (3-96)

Estimate Versus Actual Column

The S-6 provides two methods for computing the number of meals in error. The reviewer can choose to use the "Estimate" or "Actual" column. Some misunderstanding exists as to the differences and purposes of these two columns. First, it is helpful to remember that BOTH columns result in an ESTIMATE of the number of meals in error. The "Actual" column only differs from the "Estimate" column in that the "Actual" column takes into account the days in the review month when students were not yet enrolled in school or had withdrawn. To arrive at this number, the reviewer would have to add the calendar days each student was enrolled to arrive at the total maximum number of lunches reported in line 3. The "Estimate" column estimates this number by simply multiplying the number of students by the number of serving days, ignoring the fact that some students may not have been enrolled all month. The "Estimate" column was provided to lessen calculations done by the reviewer.

CRE recommends that reviewers use the easier "Estimate" column first. If the percentage of meals in error is close to 10 percent, the "Actual" column", which may reflect fewer days in error, should be completed to ensure that the SFA indeed has a PS 1 violation.

Note that both the "Estimate" and "Actual" column apply free and reduced priced ADP factors to the maximum number of meals in error to account for the fact that enrolled students do not eat meals every day. If an SFA's meal count system provides data on ACTUAL meals eaten by the students cited on the S-5, this data should be entered on the S-6 after the ADP factor is applied, i.e., line 5.

The number of meals in error calculated on the S-6 for the review period are intended to be used solely for determining if there is a PS 1 violation. This data should not be used as part of fiscal action.

GENERAL

Claims Review

As required by 7 CFR 210.8(a)(2), "at a minimum, the SFA shall compare each school's daily counts of free, reduced price and paid lunches against the product of the number of children in that school currently eligible for free, reduced price and paid lunches, respectively, times an attendance factor." Full implementation of these edit checks is important because they help ensure that monthly claims include only the number of free, reduced price and paid lunches served on any day of operation to children currently eligible for such lunches. The completion of the edit check must be coupled with follow-up activity and corrective action, as necessary, to determine the causes for edit checks which clearly indicate excessive meal counts. See 7 CFR 210.8 (a) (4).

Exhibit D

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of the	)	
Decision of the	)	
Universal Service Administrator	)	
	)	
Academia Claret, Puerto Rico, *et al.*	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ORDER

Adopted: September 21, 2006 **Released: September 21, 2006**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant 91 appeals of decisions by the Universal Service Administrative Company (USAC) denying applications for discounted services under the schools and libraries universal service mechanism.[1] These applicants' discount rates were reduced by USAC on the ground that they failed to correctly calculate the appropriate discount rate. As explained below, we find that the Puerto Rico private schools listed in Appendices A and B provided USAC with sufficient information to qualify for the appropriate discount rate for private schools in Puerto Rico. In addition, we find that the applicants listed in Appendices C and D were denied their requested discount rate for funding without a sufficient opportunity to provide evidence to support the specified discount rate. Accordingly, we grant these appeals, and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order and require USAC to process these requests according to the specific timeframes set forth herein.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, 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] The applicant, after developing a

[1] In this Order, we use the term "appeals" to generally refer to requests for review of decisions, or waivers related to such decisions, issued by the Administrator. 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. § 54.505.

technology plan, files the FCC Form 470 (Form 470) with USAC to request discounted services.[3] The Form 470 is posted on USAC's schools and libraries website for at least 28 days, during which time interested service providers may submit bids to provide the requested services.[4] After entering into a contract for eligible services, the applicant files the FCC Form 471 (Form 471) to notify USAC of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, the eligible discount rate, and an estimate of funds needed to cover the discounts to be given for eligible services.[5]

3. In accordance with the Commission's rules, the discount available to a particular applicant is determined by indicators of poverty and high cost.[6] The level of poverty for schools and school districts is measured by the percentage of student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program (NSLP) or a federally approved alternative mechanism.[7] A school's high-cost status is derived from rules that classify it as urban or rural.[8] The rules provide a matrix reflecting both a school's urban or rural status and the percentage of its students eligible for the school lunch program to establish a school's discount rate, ranging from 20 percent to 90 percent, to be applied to eligible services.[9]

4. Applicants are required to provide information that establishes their appropriate discount rate.[10] Pursuant to its operating procedures, USAC performs a Program Integrity Assurance (PIA) review to verify information contained in each application.[11] During this process, USAC may ask for additional

[3] 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).

[4] 47 C.F.R. § 54.504(b)(4).

[5] *See* 47 C.F.R. § 54.504(c). One purpose of this form is for the applicant to complete the discount calculation worksheet and for the applicant to indicate its discount percentage.

[6] 47 C.F.R. § 54.505(b).

[7] 47 C.F.R. § 54.505(b)(1).

[8] 47 C.F.R. § 54.505(b)(3)(i), (ii).

[9] 47 C.F.R. § 54.505(c).

[10] Block 4 of the FCC Form 471 asks the school to provide information regarding the school's status as rural or urban, the number of students enrolled in the school, and the number of students eligible for the National School Lunch Program (NSLP). *See* Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471). Schools choosing not to use an actual count of students eligible for the NSLP may use only the federally approved alternative mechanisms contained in the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. No. 107-110). This rule states, in relevant part, that private schools without access to the same poverty data that public schools use to count children from low-income families may use comparable data "(1) [c]ollected through alternative means such as a survey" or "(2) [f]rom existing sources such as AFDC [Aid to Families with Dependent Children] or tuition scholarship programs." *See* 34 C.F.R. § 200.78(a)(2). Schools using a federally approved alternative mechanism may use participation in other income-assistance programs, such as Medicaid, food stamps, or Supplementary Security Income (SSI), to determine the number of students that would be eligible for the NSLP. *See* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions) at 8-9.

[11] *See* Schools and Libraries website regarding Program Integrity Assurance Review (PIA Review), http://www.universalservice.org/sl/applicants/step08/default.aspx.

documentation to support the statements made on the application. USAC routinely requests that applicants provide documentation supporting their assertions regarding their student bodies' eligibility for the NSLP or alternative methods permitted by the rules governing the discount calculation.[12]

5. In the instant appeals, the Commission has under consideration multiple requests to reverse USAC's determination to deny their discount rate for funding under the schools and libraries universal service support mechanism.[13] USAC denied the applicants' requests on the ground that they failed to calculate properly the appropriate discount rate. Petitioners request review of these decisions.

III. DISCUSSION

6. In this Order, we grant 91 appeals of decisions denying requests for funding from the schools and libraries universal service support mechanism. Petitioners generally argue that they provided sufficient information to support their requested discount rate, but that USAC rejected their requests in part and reduced their requested discount rate. For the reasons discussed below, we grant these pending appeals and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order. We base our decision on the facts and circumstances of each specific case.

7. The cases under review in this Order fall into two categories: private schools in Puerto Rico and schools and libraries elsewhere in the United States. We consider these categories separately because, as discussed in more detail below, private schools in Puerto Rico and the U.S. Virgin Islands are subject to a special rule for reporting NSLP data.[14]

8. *Puerto Rico private schools.* These 69 Requests for Review involve a discount calculation issue specific to private schools in Puerto Rico.[15] According to USAC, these applicants, all private schools in Puerto Rico, failed to establish that they qualified for the discount rates sought. The appeals in this category can be divided into two groups: 1) applications in which the applicant requested a discount percentage of 80 percent or less[16] and 2) applications in which the applicant requested a discount

[12] *See* 47 C.F.R. § 54.505(b)(1), (2).

[13] *See* Appendices A-D.

[14] *See* 7 C.F.R. § 245.4.

[15] *See* Appendices A and B.

[16] Request for Review of Academia Claret; Request for Review of Academia Cristo Rey; Request of Review of Academia Nuestra Senora de la Providencia; Request for Review of Academia San Ignacio de Loyola; Request for Review of Academia San Jorge; Request for Review of Academia Santa Monica; Request for Review of Colegio Calasanz; Request for Review of Colegio CEDAS; Request for Review of Colegio Madre Cabrini; Request for Review of Colegio Nuestra Senora de Altagracia; Request for Review of Colegio Nuestra Senora de Belen; Request for Review of Colegio Nuestra Senora del Carmen; Request for Review of Colegio Nuestra Senora de Guadalupe; Request for Review of Colegio Nuestra Senora del Perpetuo Socorro de Humacao; Request for Review of Colegio Padre Berrios; Request for Review of Colegio Nuestra Senora del Rosario; Request for Review of Colegio Reina de Los Angeles; Request for Review of Colegio San Felipe; Request for Review of Colegio San Francisco de Asis; Request for Review of Colegio Sangrados Corazones 5-12; Request for Review of Colegio San Ignacio de Loyola; Request for Review of Colegio San Luis Rey; Request for Review of Colegio San Juan Bosco; Request for Review of Colegio San Juan Bosco; Request for Review of Colegio San Pedro Martir; Request for Review of Colegio Santa Cruz; Request for Review of Colegio San Vincent de Paul; Request for Review of Colegio San Vincent de Paul; Request for Review of Escuela Superior Catolica Bayamon.

percentage greater than 80 percent.[17] In each case, USAC determined that the applicants' documentation did not support the requested discount rate. USAC subsequently reduced the funding commitments, and the petitioners each filed Requests for Review.[18] After reviewing the record, we disagree with USAC's determination that the petitioners did not provide adequate documentation to establish the original requested discount rate.

9. The U.S. Department of Agriculture (USDA) has created an exception for Puerto Rico and the U.S. Virgin Islands regarding the reporting of NSLP data based upon a survey of the private schools within Puerto Rico.[19] As a result of the USDA survey, all private schools in Puerto Rico qualify for the 80 percent discount, unless the school is eligible for a greater discount.[20] Here, 30 of the 69 Puerto Rico petitioners requested a discount of 80 percent or less.[21] Based on the established Puerto Rico private school discount, USAC should have funded such requests at the requested discount level. Thus, we find that USAC erred when it denied the applicants' funding.

10. Furthermore, based on the facts and circumstances of these specific cases, we disagree with USAC's determination that the Petitioners seeking a discount greater than 80 percent did not provide adequate documentation to establish the originally requested discount levels. USAC provided the applicants with no explanation for denying the requested discount rate.[22] The Form 471 Instructions inform applicants that private schools may use surveys or comparable poverty data or data demonstrating participation in other income-assistance programs.[23] Petitioners submitted survey documentation that supports the various discount levels originally requested.[24] In accordance with Form 471 instructions, the

[17] Request for Review of Academia de Ensenanza Moderna, Inc.; Request for Review of Academia del Espiritu Santo; Request for Review of Academia Santa Teresita de Naranjito, Inc.; Request for Review of Colegio Angeles Custodios; Request for Review of Colegio Catolico Notre Dame; Request for Review of Colegio Catolico Notre Dame Elemental; Request for Review of Colegio Corazon de Maria; Request for Review of Colegio de la Salle; Request for Review of Colegio de la Inmaculada; Request for Review of Colegio de Parvulos San Idelfonso; Request for Review of Colegio Lourdes; Request for Review of Colegio Maria Auxiliadora; Request for Review of Colegio Nuestra Senora de Lourdes; Request for Review of Colegio Nuestro Senora del Perpetuo Socorro de Humacao; Request for Review of Colegio Sagrada Familia; Request for Review of Colegio San Antonio Abad; Request for Review of Colegio San Juan Bosco; Request for Review of Colegio Santa Clara; Request for Review of Colegio Santa Maria del Camino; Request for Review of Colegio Santiago Apostol; Request for Review of Hogar Escuela Sor Maria Rafaela.

[18] *See* Appendices A and B.

[19] *See* 7 C.F.R. § 245.4. Because Puerto Rico schools "provide free meals or milk to all children in schools under [its] jurisdiction regardless of the economic need of the child's family, they are not required to make individual eligibility determinations or publicly announce eligibility criteria." *Id.* The rule permits Puerto Rico to conduct a statistical survey to determine the number of students eligible for free or reduced price meals. In accordance with this rule, a different percentage is calculated for public and private schools.

[20] *See* 7 C.F.R. § 245.4.

[21] *See* Appendix A.

[22] USAC merely stated that the discount rate was corrected. *See, e.g.*, Colegio San Luis Rey, File No. SLD-412366, Funding Commitment Decision Letter; Colegio San Vincent de Paul, File No. SLD-407671, Funding Commitment Decision Letter.

[23] *See* Form 471 Instructions.

[24] *See, e.g.*, Letter from Bernardine Fontanez, Colegio Catolico Notre Dame, to Schools and Libraries Division, Universal Service Administrative Company, dated Dec. 9, 2004; Letter from Madeline Melgen, Colegio Madre Cabrini, to Schools and Libraries Division, Universal Service Administrative Company, dated March 22, 2002.

survey documentation included: the total number of students; the total number of surveys sent out; the number of surveys returned; the total number of students qualified for NSLP per the returned surveys; a sample copy of a completed survey, with the personal information crossed out for confidentiality; and a signed certification.[25] Therefore, we find that the applicants provided documentation to support the requested discount levels. 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. Based on the Puerto Rico private school discount and our review of the record, we grant the Requests for Review listed in Appendices A and B and remand these applications to USAC to take appropriate action consistent with this Order.[26] To ensure these appeals are resolved expeditiously, we direct USAC to complete its processing of the applications listed in Appendices A and B no later than 60 days from release of this Order.[27]

11. *Schools and libraries elsewhere in the United States*. The 22 appeals in this category can be divided into two groups: 1) appeals for which USAC determined that the supporting documentation was insufficient to support the requested discount level and 2) appeals for which USAC did not give applicants a sufficient amount of time to respond to requests for supporting documentation. In the first category, three applicants were specifically asked by USAC to submit additional information to support the number of students reported as eligible for free or reduced lunch.[28] Based on the responses provided by the applicants, USAC determined that these petitioners' funding requests were not supported by sufficient documentation.[29] Specifically, USAC denied these applications because a New York state NSLP form had a misleading format that prevented USAC from accurately calculating the percentage of students eligible for the NSLP program.[30] The explanation provided by the State of New York was late, but supported the applicants' originally requested discount percentage.[31] It appears from the record that the applicants submitted the information they had in a timely manner and USAC should therefore accept the late-filed information to determine the correct discount rate.[32]

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[25] *Id.*

[26] We estimate that the appeals in Appendices A and B involve disputes over approximately $1.2 million in funding for Funding Years 2002-2005. 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 Third Quarter 2006, dated May 2, 2006.

[27] If USAC requires further documentation in order to calculate the correct discount rate, it shall provide applicants with a 15-day opportunity to file such documentation.

[28] Request for Review of United Talmudical Academy; Request for Review of Yeshiva Jesode Hatorah; Request for Review of Yeshiva Tzemach Tzadik Viznitz.

[29] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jacob Klagsbrun, United Talmudical Academy, dated October 21, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Joseph Lefkowitz, Yeshiva Jesode Hatorah, dated April 4, 2001; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chany Lowy, Yeshiva Tzemach Tzadik Viznitz, dated October 21, 2002.

[30] *Id.*

[31] *See* Letter from Sandy Fruhling, The Board of Jewish Education of Greater New York, to Yeshiva Jesode Hatorah, dated Feb. 16, 2001; Letter from Richard Connell, The New York State Education Department, to Joseph Lefkowitz, Yeshiva Jesode Hatorah, dated Aug. 8, 2002. *See, also*, Letter of Appeal from United Talmudical Academy, Dec. 11, 2002; Letter of Appeal from Yeshiva Jesode Hatorah, Aug. 13, 2002; Letter of Appeal from Yeshiva Tzemach Tzadik Viznitz, Dec. 16, 2002.

[32] *See* Letter from Jacob Klagsbrun, United Talmudical Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed March 4, 2002; Letter from Joseph Lefkowitz, Yeshiva Jesode Hatorah, filed

12. In the second category, USAC's Schools and Libraries Division asked 19 applicants to submit additional information to support the requested discount rate.[33] Based upon our review of the record, it appears that USAC improperly reduced the requested discount rate without providing the applicants with a sufficient opportunity to provide supporting evidence. For example, in one case, the applicant complied with USAC's request to provide requested information by next day Federal Express; however, the Administrator's Decision on Appeal referred to this filing as "new information" and it was not accepted.[34] In addition, several appeals indicate that the applicants submitted some of the requested information, but were unable to fully comply with the document request within USAC's permitted time period.[35] In other cases, there is no explanation in the record why USAC denied the requested discount rate.[36] Finally, several appeals seem to contain inconsistent findings by USAC regarding crucial issues.[37]

Feb. 19, 2001; Letter from Mrs. Lowen, Yeshiva Tzemach Tzadik Viznitz, to Schools and Libraries Division, Universal Service Administrative Company, filed March 20, 2002.

[33] *See* Appendix D. Request for Review of Charlotte-Mecklenberg Schools; Request for Review of Crawford County Library System; Request for Review of Davey School District 12; Request for Review of Erie 1 BOCES; Request for Review of Fort Wayne Community School District; Request for Review of Holgate School District; Request for Review of Life Skills Center of Metro Cleveland; Request for Review of Life Skills Center of Summit County; Request for Review of Life Skills Youngstown; Request for Review of The Lotus Academy; Request for Review of Martin's Ferry School District; Request for Review of Miami-Dade County Public Schools; Request for Review of Montessori Day Public School Chartered-Mountainside; Request for Review of Municipal Telephone Exchange; Request for Review of Nazareth Regional High School; Request for Review of Orleans/Niagra BOCES; Request for Review of Salesian High School; Request for Review of Western New York Regional Information Center (on behalf of Lackawanna City School District).

[34] *See* Western NY Regional Information Center, Orleans/Niagara BOCES, File No. SLD-263445.

[35] *See, e.g.,* Montessori Day Public School Chartered, File No. SLD-417776, Administrator's Decision on Appeal (Oct. 4, 2004) at 2 (survey was conducted late); Lotus Academy, File No. SLD-330213 (survey was not completed within the seven-day period provided by USAC); Erie 1 BOCES, File Nos. SLD-382697, 382717, 382562 (the information submitted during the application review process resulted in discount calculation of 67 percent instead of the originally requested 70 percent); Lackawanna City School District, File No. SLD-327211 (applicant requested an incorrect discount on the Form 471 and contends USAC should have corrected this error due to additional information in the application).

[36] *See, e.g.*, Fort Wayne Community School District, File Nos. SLD-344348, 337694, 381347; Martin Ferry School District, File Nos. SLD-465077, 481089; Miami-Dade County Public Schools, File Nos. SLD-428945, 417856, 417352, 389949, 416173; Holgate School District, File No. SLD-484696.

[37] *See* Nazareth Regional High School, File No. SLD-431907, 428860 (USAC denied the requested 80 percent discount rate claiming that the survey lacked the student grade, family size, and income, but on appeal, the school stated that the student survey included these sections. The record indicates that the survey submitted during the PIA process was missing the student's grade, but not the family size and income); Davey School District 12, File No. SLD-340079 (USAC denied the requested 90 percent discount level because the survey forms did not contain the address of the surveyed families; the record on appeal shows that the address is part of the form). In another case, there appears to be an inconsistency on the part of the schools and libraries division of USAC. *See* Municipal Telephone Exchange, File No. SLD-237704 (contending that the city of Baltimore received a 78 percent discount, yet the Baltimore city library, Enoch Pratt Free Library, received a 73 percent discount). Finally, USAC appears to have disregarded what its employees specifically advised the applicant. *See* Crawford County Library System, File No. SLD-338140 (Crawford County Library System (Crawford) accidentally selected the 20 percent discount, which is the default for the program. The record indicates two USAC employees informed the librarian that the discount rate for Crawford would be adjusted from the default 20 percent to 67 percent; however, USAC funded only 20 percent).

13. Balancing the facts and 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.[38] In several cases, it appears that the applicants may have fully complied with USAC's procedures. Furthermore, any violations involved a USAC administrative deadline, not a Commission rule. As the Commission has noted previously, given that these violations were procedural, not substantive, we find that the reduction in funding is not warranted.[39] Although deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to USAC's procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.[40] We find that, for these applicants, denying their request for funding would create undue hardship and prevent these schools and libraries from receiving E-rate funding. Notably, at this time, there is no evidence of waste, fraud, or abuse, misuse of funds or failure to adhere to core program requirements.

14. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in Appendices C and D, and issue an award or denial based on a complete review and analysis no later than 60 days from release of this Order. Specifically, USAC must carefully review each case and inform applicants of any errors that are detected in their applications, along with a specific explanation of how the applicant can remedy such errors. USAC should not deny those funding requests where the applicant made a good faith effort to comply with the survey guidelines but did not include some information on the student survey regarding the student's grade, address or number of persons in the household.[41] USAC shall provide applicants with a limited 15-day opportunity to file additional documentation, if necessary, in order to support the applicant's calculation of the correct discount rate and should accept information already provided by the applicant that USAC deemed late. In future applications involving discount calculation issues, USAC must inform applicants of any errors regarding the discount rate calculation it identifies, along with specific explanation of how the applicant can remedy such errors. USAC must give applicants a reasonable period of time in which to provide requested information.

15. Finally, we are committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or 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

[38] We estimate that the appeals in Appendices C and D involve disputes of approximately $3.9 million in funding for Funding Years 2000-2005, and we note that USAC has already reserved sufficient funds to address outstanding applications.

[39] *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, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School*).

[40] 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.

[41] *See* Schools and Libraries website regarding Survey Guidelines for Alternative Discount Mechanisms, http://www.universalservice.org/sl/applicants/step05/alternative-discount-mechanisms.aspx#3. The USAC website provides applicants with guidelines regarding survey content. The guidelines state that student surveys must include: 1) address of family, 2) grade level of each child, 3) size of family, and 4) income level of the parents.

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

16. 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), and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Requests for Review as listed in Appendices A, B, C, and D of this Order ARE GRANTED and ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

17. 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 pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, USAC SHALL COMPLETE its review of each remanded application listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from release of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

Appendix A

Applicant Name	Applicant Number SLD	Funding Year	Requested Eligible Discount	Approved Discount
Academia Claret	401699	2004	50	20
Academia Cristo Rey	399717	2004	80	20
Academia Nuestra Senora de la Providencia	413108	2004	60	20
Academia San Ignacio de Loyola	406954	2004	80	20
Academia San Jorge	421080	2004	80	20
Academia Santa Monica	424281	2004	50	20
Colegio Calasanz	412313	2004	60	20
Colegio CEDAS	414199	2004	80	20
Colegio Madre Cabrini	290106	2004	60	20
Colegio Madre Cabrini	412620	2004	60	20
Colegio Nuestra Senora de Altagracia	410127	2004	80	20
Colegio Nuestra Senora de Belen	423510	2004	80	20
Colegio Nuestra Senora del Carmen	412224	2004	60	20
Colegio Nuestra Senora del Carmen	457126, 457077	2005	80	70
Colegio Nuestra Senora de Guadalupe	399002	2004	80	20
Colegio Nuestra Senora de la Caridad	411091	2004	60	20
Colegio Nuestra Senora del Perpetuo Socorro de Humacao	450318, 404239	2005	80	70
Colegio Nuestra Senora del Rosario	420579	2004	80	20
Colegio Padre Berrios	412273	2004	80	20
Colegio Reina de Los Angeles	414847	2004	80	20
Colegio San Felipe	456788	2005	80	70
Colegio San Francisco de Asis	451668	2005	80	70
Colegio Sangrados Corazones 5-12	414579	2004	60	20
Colegio San Ignacio de Loyola	421549	2004	80	20
Colegio San Luis Rey	412366	2004	80	20

Colegio San Juan Bosco	414602	2004	80	20
Colegio San Pedro Martir	424963	2004	80	20
Colegio Santa Cruz	41313	2004	80	20
Colegio San Vincent de Paul	407671	2004	80	20
Escuela Superior Catolica Bayamon	408984	2004	60	20

Appendix B

Applicant Name	Applicant Number SLD	Funding Year	Requested Eligible Discount	Approved Discount
Academia de Ensenanza Moderna, Inc.	448876	2005	90	70
Academia de Ensenanza Moderna, Inc.	452309	2005	90	70
Academia del Espiritu Santo	406762	2004	90	20
Academia del Espiritu Santo	406772	2004	90	20
Academia Santa Teresita de Naranjito, Inc.	290615	2004	90	20
Colegio Angeles Custodios	423537	2004	90	20
Colegio Angeles Custodios	423519	2004	90	20
Colegio Catolico Notre Dame	463208	2005	90	70
Colegio Catolico Notre Dame Elemental	400866	2004	90	20
Colegio Corazon de Maria	408830	2004	90	20
Colegio Corazon de Maria	408740	2004	90	20
Colegio Corazon de Maria	405824, 405859	2004	90	20
Colegio de la Salle	415491	2004	90	20
Colegio de la Salle	415141	2004	90	20
Colegio de la Inmaculada	410117	2004	90	20
Colegio de la Inmaculada	410114	2004	90	20
Colegio de Parvulos San Idelfonso	410189	2004	90	20
Colegio de Parvulos San Idelfonso	410164	2004	90	20
Colegio Lourdes	425310	2004	90	20
Colegio Maria Auxiliadora	399296	2004	90	20
Colegio Maria Auxiliadora	423477	2004	90	20
Colegio Maria Auxiliadora	423955	2004	90	20
Colegio Maria Auxiliadora	423483	2004	90	20
Colegio Nuestra Senora de Lourdes	412391	2004	90	20
Colegio Nuestra Senora de Lourdes	412425	2004	90	20
Colegio Nuestro Senora del Perpetuo Socorro de Humacao	404171	2004	90	20
Colegio Sagrada Familia	413456	2004	90	20

Colegio Sagrada Familia	402642, 402921	2004	90	20
Colegio Sangrada Familia	454052	2005	90	70
Colegio San Antonio Abad	294102	2004	90	60
Colegio San Juan Bosco	457034	2005	90	70
Colegio Santa Clara	412313	2004	90	20
Colegio Santa Clara	410113	2004	90	20
Colegio Santa Maria Del Camino	423759	2004	90	20
Colegio Santa Maria Del Camino	423706	2004	90	20
Colegio Santiago Apóstol	401068, 401050	2004	90	20
Colegio Santiago Apóstol	410769	2004	90	20
Hogar Escuela Sor Maria Rafaela	470896	2005	90	70
Hogar Escuela Sor Maria Rafaela	470970	2005	90	70

Appendix C

Applicant Name	Applicant Number SLD	Funding Year	Requested Eligible Discount	Approved Discount
United Talmudical Academy	222167	2001	90	80
Yeshiva Jesode Hatorah	204874	2000	90	80
Yeshiva Tzemach Tzadik Viznitz	256095	2001	90	80

Appendix D

Applicant Name	Applicant Number SLD	Funding Year	Requested Eligible Discount	Approved Discount
Charlotte-Mecklenburg Schools	443813	2005	66	63
Crawford County Library System	338140	2003	60	20
Davey School District 12	340079	2003	90	80
Erie 1 BOCES	382697, 382717, 382562	2003	70	67
Fort Wayne Community School District	344348	2003	72	67
Fort Wayne Community School District	337694, 381347	2003	72	67
Holgate School District	484696	2005	64	55
Martin's Ferry School District	465077, 481089	2005	74	67
Life Skills Center of Metro Cleveland	459134	2005	90	20
Life Skills Center of Summit County	458589	2005	90	70
Life Skills Youngstown	459034, 457132	2005	80	20
The Lotus Academy	330213	2002	90	50
Miami-Dade County Public Schools	428945, 417856, 417352, 389949, 416173	2004	90	60
Montessori Day Public School Chartered-Mountainside	417776	2004	50	20
Municipal Telephone Exchange	237704	2001	78	73
Nazareth Regional High School	431907, 428860	2004	80	20
Orleans/Niagara BOCES	263445	2001	50	20
Salesian High School	487345	2005	60	20
Western New York Regional info Center (on behalf of Lackawanna City School District)	327211	2002	90	82

Exhibit E

Alternative Discount Mechanisms Fact Sheet

1. Primary measure for E-rate
2. Alternative mechanisms
3. Survey guidelines
4. Acceptable alternative measures of poverty
5. Existing sources
6. Matching siblings
7. Projections based on surveys
8. Unacceptable alternative mechanisms

1. Primary measure for E-rate

The primary measure for determining E-rate discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program, calculated by individual school. Students from family units whose income is at or below 185% of the federal poverty guideline are eligible for the NSLP.

The FCC's rationale for using NSLP data is as follows:

> "[T]he national school lunch program determines students' eligibility for free or reduced-price lunches based on family income, which is a more accurate measure of a school's level of need than a model that considers general community income."
>
> — FCC 97-157 ¶ 509

A chart defining the Income Eligibility Guidelines (IEG) for NSLP eligibility for the current year (07/01/2000 - 06/30-2001) is available by clicking here.

2. Alternative mechanisms

The FCC also sanctions other mechanisms to determine a school's level of need, as long as those mechanisms are based on — or do not exceed — the same measure of poverty used by NSLP:

> "[A] school may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program...
>
> "[S]chools that choose not to use an actual count of

- Low Income Home Energy Assistance Program

Participation in Temporary Assistance for Needy Families (TANF) is an acceptable alternative measure of poverty ONLY IF the family income of participants is at or below the IEG for NSLP. Similarly, participation in need-based tuition assistance programs is acceptable if the family income of participants is at or below the IEG for NSLP.

5. Existing sources

Schools may also use existing sources of data which measure levels of poverty, such as TANF or need-based tuition assistance programs. However, these measures are acceptable for E-rate purposes only if the family income of participants is at or below the IEG for NSLP.

6. Matching siblings

The siblings of a student in a school that has established that the student's family income is at or below the IEG for NSLP may also be counted as eligible for E-rate purposes by the respective schools the siblings attend. For example, an elementary school has established, through a survey, that a student's family income is at or below the IEG for NSLP. That student has a brother and a sister who attend the local high school. The high school may use the status of the elementary school sibling to count his high school siblings as eligible for E-rate purposes, without collecting its own data on that family.

7. Projections based on surveys

If a school has sent a questionnaire to all of its families, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for E-rate purposes for all students in the school. For example, a school with 100 students sent a questionnaire to the 100 homes of those students, and 75 of those families returned the questionnaire. The school finds that the incomes of 25 of those 75 families are at or below the IEG for NSLP. Consequently, 33 percent of the students from those families are eligible for E-rate purposes. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, are eligible for E-rate purposes.

8. Unacceptable alternative mechanisms

The following alternative measures of poverty are NOT acceptable for determining E-rate discounts. They rely on projections rather than on the collection of actual data:

a. Feeder school method. This method projects the number of low-income students in a middle or high school based on the average poverty rate of the elementary school(s)

which "feeds" students to the middle or high school.

b. Proportional method. This method projects the number of low-income students in a school using an estimate of local poverty.

c. Extrapolation from non-random samples. This method uses a non-random sample of students chosen to derive the percentage of poverty in a school, such as those families personally know by the principal ("Principal's method") or the families of students who apply for financial aid (a non-random sample).

d. Title 1 eligibility. This method uses eligibility for Title 1 funds as the criterion for estimating the level of poverty in a particular school. Some measures of poverty eligible under Title 1 are indirect estimates of poverty, and do not necessarily equate to the measure of poverty for E-rate, namely eligibility for NSLP.

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Exhibit D