

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

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In the Matter of )

Schools and Libraries Universal Service )  
Support Mechanism )

CC Docket No. 02-6

**PETITION FOR THE WAIVER OF E-RATE RULES CONCERNING**

- **INCLUSION OF ALL ENTITIES TO RECEIVE SERVICE ON THE BLOCK 4 OF THE ORIGINAL FORM 471 UNDER THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM WITH RESPECT TO FY 2007 FORMS 471 # 585165, 550299, 586416, AND 584480, FY 2008 FORMS 471 # 616735, 636670, 613699, 613794, 635733, AND 635961 AND FY 2009 FORMS 471 # 674236, 687776, 691201, 691369, 691871, 691925, 666091, 666555, 681678, 681705, 691930, AND 692173**
- **THE ABILITY TO CHANGE APPLICATION TYPE AFTER SUBMISSION OF THE FORM 471 WITH RESPECT TO FY 2007 FORM 471 # 584480 AND FY 2008 FORMS 471 # 606647 AND 634554**

**Filed by the Recovery School District, Entity #16042306, and New Orleans Public School, Entity #139223**

On April 3, 2009, the State of Louisiana Recovery School District (RSD) (Entity # 16042306) and New Orleans Public Schools (NOPS) (Entity # 139223) submitted to the Commission a petition for the waiver of E-rate rules concerning: (a) inclusion of all entities to receive service on the Block 4 of the original Form 471 with respect to Funding Year (FY) 2007 Forms 471 #585165, 550299, and 586416, and (b) the ability to change application types after submission of the Form 471 with respect to FY 2008 Forms 471 #606647 and 634554.

After further consideration of the issues, we understand that they are more complex than we understood them to be at that time and that the issues on which we need relief are broader than just the issues we raised in that petition. Therefore, we wish to withdraw the April 3<sup>rd</sup> filing and ask that you treat this as a new petition for waiver of your rules so that RSD and NOPS may receive the E-rate funds for which they applied for FYs 2007, 2008, and 2009 notwithstanding issues about the entities we listed on those applications and the application type we indicated at the time of filing.

By granting the waivers we request, the Commission will help New Orleans area public schools continue their recovery from the devastation caused by Hurricane Katrina. Please note that our requests do not involve any increases to our total funding requests for FY 2007, FY 2008, or FY 2009.

The basic issue we confront is what has happened to New Orleans area public schools since Hurricane Katrina struck in August 2005. Most schools were damaged and many were destroyed. Even before the storm, the Louisiana State Legislature passed Acts 2005, 1<sup>st</sup> Ex. Sess., No. 35 § 1 (Act 35) of the Louisiana Legislature (see Attachment 1), which created the Recovery School District within the Louisiana Department of Education and directed it to take over poorly performing schools in public school districts throughout the State. Pursuant to Louisiana Revised Statute 17:10.7 (see Attachment 2), which states that all schools meeting the specified criteria will be placed into RSD, 107 schools within the New Orleans Public School District were placed into RSD in November 2005, before public schools started reopening in New Orleans. The list of 107 schools is attached (see Attachment 3).

As schools began to reopen after Katrina in late 2005 and throughout the next several years, they often reopened in buildings that were not their original homes. Many schools were chartered out and their educational program became the responsibility of a charter company. The conditions of buildings post-storm necessitated that schools sometimes move from year to year. RSD also used private school buildings if the private school was no longer operating and RSD did not have other acceptable facilities for newly reopening schools. Given the complex association between school programs and facilities created by Katrina and Act 35, we struggled with what entities to list on the Block 4 worksheets of our Forms 471. We usually did not know in February before the funding year the population that would be returning to New Orleans over the coming year, which schools would be opening for that next school year, or which buildings they would be in. Generally, we used a "building" approach for completing the Block 4 worksheets, that is, we used the pre-Katrina name and entity number of the buildings that did or might house school programs in the coming funding year.

Now we understand that we should use the "school program" (not "building") name on the Block 4 worksheets and that the Universal Service Administrative Company (USAC) does not have authority to substitute "new" entities on our Block 4 worksheets for the entities we listed. Further, we have determined that virtually all the RSD schools receiving service in FYs 2007, 2008, and 2009 are "new" compared to the entities and entity numbers we listed on the Block 4 worksheets because they are a school program that is not the building name we listed, or because they were taken over by RSD and are no longer under the administrative authority of NOPS (and therefore need new entity numbers), and/or because they have been chartered out and their educational program is under the direction of a charter company (and therefore they need new entity numbers).

For Federal (Title I, II, III, IV and V) and state funding purposes, all RSD schools are "new" schools that must support their budgets, funding, and meet all legal requirements. As an example, the schools taken over by RSD did not receive any DOE Title I School Improvement Funds as they had not been in existence long enough. The schools are not accountable for any past debts, obligations, requirements or other pre-existing contracts that may have been associated with the school prior to its transfer into RSD except as is specified in Act 35 of the Louisiana Legislature.

The RSD schools are also considered "new" under NCLB and the state of Louisiana accountability systems. After Katrina, the DOE was given approval by the USDOE to consider the RSD schools as "new." The Louisiana state accountability system used the 2006-2007 test scores as the first official test scores for the RSD schools. In addition, Louisiana state policy allows for schools to be considered "new"

after they have been closed for more than 25 days and/or they have a significant turnover of staff. The RSD schools met both of these requirements.

In addition to funding, all school policies, administration, personnel, and curriculum are determined by RSD or its charter designee and do not reflect those of the previous school district operator. Any student who wishes to attend a new RSD or charter school must apply/enroll to the school for admittance.

As you will see below, we are seeking waivers from the Commission to permit USAC to correct the list of entities on our Block 4 worksheets to reflect the school programs that actually received the services for which we requested discounts in those years and the new entity numbers most will need to have assigned.

Because we are the only “school district” in the United States that has ever faced a situation of such complexity, we have had to work very hard with USAC and the FCC to process our applications, and it is through these discussions that we have determined that a waiver is the only way to move our FYs 2007, 2008, and 2009 applications forward. The steady element here is that the schools represented in this petition are serving the public school population of the metropolitan New Orleans area, as NOPS schools did before the storm. Most of the New Orleans area public schools have undergone multiple changes since Katrina – in location, in administrative authority, and/or in authority for the educational program, all factors that we think make a school a “new” school. But these “new” schools, like the schools we listed on our Block 4 worksheets, serve or did serve the public school population of the New Orleans metropolitan area. Without approval of our waiver requests, the public school population that has been educated in the New Orleans area public schools during these funding years will be denied E-rate discounts that were requested in good faith, because of crucial and necessary changes that have taken place in New Orleans since Katrina.

#### FY 2007

We are providing a table showing the schools (for NOPS and RSD on separate tabs of the spreadsheet) as listed on the original Block 4 worksheets and, for RSD, showing the school “program” that received service at that address in FY 2007 (Attachment 4). We are showing entity numbers for the Block 4 entities as they were listed in the Block 4s, but we do not show entity numbers for the “school programs” that received service since we think that most or all of those will need new entity numbers based on their status as “new” schools. We have gone through detailed service provider bills for most of the products/services for which E-rate funds were requested for FY 2007. In the case of Verizon Wireless, we have not gone through the voluminous bills in the time we have had, but have relied on documentation available when the application was filed. Under each FRN, we show the dollars invoiced for products or services provided for the schools shown. In the case of 4 FRNs on RSD 471 #585165 (FRNs 1624907, 1625734, 1626646, and 1624450), no applicable services were delivered and we have asked USAC to cancel those FRNs. We are not asking for cancellation of any FRNs on the NOPS’ applications (but note that we had previously requested USAC to cancel FRN 1621361 on 471 # 584480 since it duplicated a request on an RSD application). This table identifies the “new” school programs that received service in FY 2007.

We understand that a waiver is required for any school deemed to be a “new” school for FY 2007, FY 2008, or FY 2009. No school listed in NOPS’ Block 4s for these funding years is considered a “new” school except the Sophie B. Wright Charter School, which is an RSD school.

We understand that the FCC defers to the state to define what makes a school “new.” We have concluded that transfer from a local school district to the RSD is a circumstance that makes a school “new,” and the chartering out of a school also makes a school “new” again since the authority for the educational

program at the school is changing. Therefore, we think that effectively none of the RSD “schools” on the original Block 4 or any of the entities we added during the RAL correction process are the same as the “new” schools that received service during that funding year. Therefore, we ask that you waive the rules and let the school program names listed in the fourth column of the RSD tab of the table for FY 2007 be substituted for the entities in the original Block 4s in the RSD Form 471 and the NOPS consortium applications for FY 2007. We understand that many of the entities in that column will need new entity numbers from SLD based on this determination.

With respect to NOPS’ FY 2007 471 # 584480, which was filed as a “School District” application, it included the Wright Middle School, which is an RSD school, in the Block 4 worksheet for NOPS. (See discussion below about Wright Middle School.) In order for NOPS to be reimbursed for the Verizon Wireless service to the Wright Middle School for which it paid, we request that the Commission waive the rules and permit USAC to update the entity number and keep the school on the 471 even though it became a “new” school after being taken over by RSD.

As mentioned above, the columns for the FY 2007 FRNs show the dollars billed by school for that product or service. A few columns have Xs rather than dollars. In these cases, the services are district-wide: the cost is attributable to the entire district and cannot be broken down by school. However, FCC rules require that each funding request on a Form 471 cite a Block 4 that lists every entity receiving the product or service for which funds are requested in that funding request. The Xs designate the schools that benefitted from those FRNs in FY 2007.

FRN 1572120 is for RSD and NOPS’ Internet access service, which is provided by the service provider, AT&T, to the data center. From there, Internet service is extended to the entities attached to the data center. Although the entities on the consortium’s network receive Internet service, each site on the network does not have a segmented and specific amount of bandwidth assigned to it. Rather, the entire network shares one connection. The original request for Internet access was to serve 85 sites. The reduction of sites from 85 to 73 does not warrant a reduction in bandwidth. Therefore, the change in the number of sites does not affect the actual cost to the district, since the bandwidth of the Internet connection is the same.

FRN 1627927 is a funding request for upgrade of call manager equipment at the data center that serves the district. FRN 1627943 is for maintenance of equipment at the district data center, through which the Internet access is distributed to the entities on the network. The equipment costs the same to upgrade and maintain regardless of how many entities are connected to it.

The table shows two BellSouth POTS FRNs on 471 #550299 – FRN 1568737 for dial tone service and FRN 1568782 for long distance. The table also shows that the consortium used \$451,736.67 for dial tone service although only \$230,151.00 had been requested, but it used only \$8,410.04 for long distance where \$102,000.00 had been requested. We ask that you waive the rules to permit USAC to split FRN 1568782 into two FRNs – the existing FRN for long distance at \$8,410.04 for long distance and a new FRN with the remaining \$93,589.96 from the existing FRN for dial tone. We believe this change is consistent with the rules for service substitutions post-commitment but may not be an authorized change pre-commitment without the waiver we request. This change will allow us to use funds requested for long distance to cover more of our actual POTS expenses than we could do without the waiver.

## FY 2008 and FY 2009

We have started a spreadsheet for FY 2008 similar to the FY 2007 spreadsheet to identify entities receiving service and, eventually, the expenses incurred under each FRN for each such entity. We are providing that spreadsheet (Attachment 5). The entity information is included but there is no cost information yet until we are able to review all the service provider bills and assign costs properly. The table indicates that, like FY 2007, entities that were not included in the original Block 4 received products/services in FY 2008 for which E-rate funds were requested. Although some of the schools in the Block 4 for 2008 are the same “new” schools that received services in 2007, we have concluded that effectively none of the RSD “schools” on the original Block 4 or any of the entities we added during the RAL correction process are the same as the “new” schools that received service during that funding year. As we work with USAC to determine which schools need new entity numbers for various funding years, unless a “new” school in FY 2007 underwent a change such as being chartered out during the year, it will not be a “new” school for FY 2008 and will not get a new entity number for FY 2008.

Therefore, we ask that you waive the rules and let the school program names listed in the fourth column of the RSD tab of the table for FY 2008 be substituted for the entities in the original Block 4s in the RSD Forms 471 for FY 2008. This list of schools will be applicable for all RSD FRNs except FRN 1762251 for wiring. The list of 26 “new” schools for that FRN is on the tab “Wiring Block 4” of the 2008 table we are providing.

We used mostly old entity numbers on the FY 2009 RSD Forms 471 # 687776 and 674236, as well. We are providing a table comparing the entities as listed on the Block 4s on these applications and the school programs that are or will be operating at those addresses (Attachment 6). We ask that you waive the rules and authorize USAC to substitute the school program names listed in the fifth column of the FY 2009 RSD table where they are different from the entities in the original Block 4s and to update the entity numbers as required. Please note that some moves indicated on the table will occur during the funding year, that is, a school will be at one address for the first half of the year and then move to another building between semesters as new buildings are constructed or old buildings complete renovation. Since there are existing procedures to account for school moves, we believe we can work with USAC to properly document these changes. This table will apply for the Block 4 that supports the Priority 1 FRNs. For the basic maintenance FRN on 471 # 687776 (1892793), this table will also apply but we need to add one more school – New Orleans City Park Academy, entity number 80085 – which applied on its own for Priority 1 services but will depend on RSD for equipment maintenance. We requested FY 2009 funding for equipment and cabling for four schools in FRNs 1892917 and 1893229 on Form 471 # 687776. We now believe that, if we are able to access the FY 2008 internal connections funding that we requested, we will have the funds to complete the Local Area Networks at all our schools so we authorize USAC to cancel these two FY 2009 FRNs.

Some RSD schools applied on their own or through their charter operator for E-rate discounts for FYs 2008 and/or 2009. Below is a list of those entities. We are concerned that they will encounter the same difficulties as RSD did with respect to whether they applied as the “new” school they became after being taken over by RSD or after being chartered out. Therefore we ask that you waive your rules and let USAC change entity names and numbers for the schools below as necessary on these applications so that they will be eligible for funding.

School Name	Funding Year	School's Entity Number on 471	471 #s
Dr. Martin Luther King Jr. Charter School for Science and Technology	2009	80036	691201 691369 691871 691925
New Orleans City Park Academy	2008	80085	613699
	2009	80085	666091
New Orleans Free Academy	2008	79995	613794
	2009	79995	666555
Nelson	2009	80079	681678 681705
Pierre A. Capdau Charter School	2009	80131	681678 681705
Thurgood Marshall Early College High School	2009	16050847	681678 681705
Algiers Technology Academy	2009	16050320	691930 692173
Dwight D Eisenhower Elementary	2008	80215	635733 635961
	2009	80215	691930 692173
Edna Karr Secondary School	2009	80212	691930 692173
Harriet R. Tubman Elementary School	2008	79980	635733 635961
	2009	79980	691930 692173
Harte Elementary School	2009	80213	691930 692173
Martin Behrman Elementary School	2008	79981	635733 635961
	2009	79981	691930 692173
McDonogh Elementary School 32	2008	79985	635733 635961
	2009	79985	691930 692173
Walker O Perry High School	2008	79983	635733 635961
O Perry Walker High School	2009	79983	691930 692173
Rosenwald Elementary School	2008	80211	635733 635961
William J Fischer Elementary School	2008	79988	635733 635961
	2009	79988	691930 692173

Your granting of these waivers will enable RSD and its schools and charter operators to obtain reimbursement for the costs of providing eligible products and services to eligible entities during FY 2008 and FY 2009.

While we believe we are providing accurate information about the school programs that have been and will be served, it may be that we have made some mistakes, or that USAC will disagree with some of the entities we have listed, or that there will be further changes as we go forward. Therefore, we ask that, in addition to approving our waiver requests for the FYs 2007 through 2009 applications, you authorize USAC to make any additional corrections to our applications that arise as we work with them to finish processing the applications as long as the additional corrections are in the spirit of any waivers you grant.

Sophie B. Wright Charter School

The Wright Middle School is an RSD school that receives its telecommunications and Internet services via the NOPS network. During FY 2008 (and FY 2007), the Wright School chose to stay in the NOPS network when RSD decided to split away in favor of its own network. Wright is a technology-rich school, and its CEO (principal) felt the NOPS network would best support her academic program. So when other schools left, Wright asked to be maintained as if it were still one of NOPS' sites. In addition, all of the services for Wright were billed to NOPS and not RSD, and not Wright, so NOPS is the Billed Entity for services to Wright.

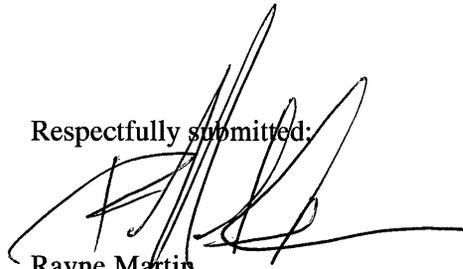
As discussed above, NOPS included the Wright Middle School on its FY 2007 471 # 584480 in the Block 4 worksheet for NOPS. NOPS paid the Verizon Wireless bills for the Wright Middle School. We ask above for a waiver to permit this "new" school to be kept on this application. This application was categorized as a "School District" application.

RSD mistakenly included the Wright School on its FY 2008 Forms 471, but has since requested USAC to remove that entity. NOPS also included the Wright School on its FY 2008 Forms 471 (471 #s 606647 and 634554), but mistakenly categorized those Forms 471 as School District applications. They should have been classified as Consortium applications.

We have been advised that change to a Form 471 from "School District" to "Consortium" goes beyond the ministerial and clerical corrections that USAC is authorized to make to Forms 471. Therefore, we ask that you waive the rules to permit the change of application type on NOPS' FY 2007 471 # 584480 and FY 2008 Forms 471 # 606647 and 634554 from School District to Consortium with the appropriate changes to the Block 4 worksheets.

Please let us know if you need additional information. Our contact person for this matter is George McDonald of E-Rate Central. He can be reached at 703-836-2450 or via e-mail at [gmcdonald@e-ratecentral.com](mailto:gmcdonald@e-ratecentral.com).

Respectfully submitted:



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