

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

In the Matter of)	
)	
Request for Review of Decisions of the)	CC Docket No. 02-6
Universal Service Administrator)	
)	
Lakeview Charter Academy)	File Nos. SLD482548, SLD482386,
)	SLD482321 (All FY2005)

To: Chief, Wireline Competition Bureau

SUPPLEMENT TO CONSOLIDATED REQUEST FOR REVIEW AND WAIVER

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SUMMARY

This Supplement is made to the Consolidated Request for Review and Waiver (“Consolidated Request”) filed on March 13, 2009 by the Lakeview Charter Academy (the “School”).

In its *Brownsville Order* the Federal Communications Commission (“FCC” or “Commission”) addressed the application of its Technology Plan rules by the Schools and Libraries Division of the Universal Service Administrative Company’s (collectively, “USAC”) In this case USAC did not follow the *Brownsville* directive and, as a result, the School is appealing Notification of Improperly Disbursed Funds Letters (“Notices”) issued and upheld on appeal by USAC for Funding Year (“FY”) 2005 requests.

Specifically, USAC issued Notices for all of the School’s FY2005 Funding Request Numbers (“FRN”) based on the conclusion that the School did not have an approved Technology Plan at the time the School filed its FY2005 FCC Form 486. Unfortunately, the Los Angeles County Office of Education (“County”), at that time, did not automatically issue letters or any other correspondence notifying schools that their Technology Plan had been approved. When USAC asked for documentation of the County’s approval, the County and the School mistakenly provided conflicting information which implied that the School’s Technology Plan was not approved before the School filed its FCC Form 486.

In California, there is a two-step process for Technology Plan approvals. The County approves Technology Plans for E-rate purposes and then sends the Technology Plan to the State of California Department of Education (“DOE”) for further review and approval so a school may receive additional state funds. Due to inexperience and confusion, the School and the County initially provided USAC with conflicting information about the Technology Plan approval

process in California and when the School received approval of its Technology Plan from the County, the only approval it needed for E-rate purposes. However, the School ultimately provided USAC with proof that its Technology Plan was approved on April 6, 2006 by the County when the School's Form 486 was filed. Nevertheless, USAC chose to ignore that information for an unexplained reason and denied the School's appeal of the Notices.

USAC erroneously concluded that the School did not have the requisite approval of its Technology Plan when it filed its FCC Form 486 when, in fact, it did. Per the FCC's *Brownsville* Order, USAC should have sought additional information from the School and the County to clear-up the discrepancy in the information provided to USAC. If USAC did not receive a response to its request for additional information from the County, then pursuant to *Brownsville*, it needed to take additional steps to obtain the information it needed.

Specifically, the School argues that USAC erred in denying its appeal for the following reasons. First, USAC's denial of the appeal erroneously concluded that the date the School received approval of its FY2005 Technology Plan from the DOE was the same date its Technology Plan was approved for E-rate purposes. Yet USAC fails to explain why it ignored information from the County to the contrary. Second, USAC issued Demand Payment Letters before the appeal period to the FCC had expired. Specifically, while the School was still trying to determine what to do about the Notices and its USAC-denied appeal thereof, it received First and Second Demand Payment Letters before the 60-day window closed for timely filing an appeal with the FCC. Third, USAC's denial and Demand Payment Letters are now causing unjust and unfair application of the FCC's Red Light rule even though an appeal to the FCC has been lodged and there was no basis for issuing the Notices in the first place. This USAC action is affecting other unrelated applications filed by the School for E-rate support.

The facts in this case unequivocally demonstrate that the School had an approved Technology Plan at the time it filed its FY2005 FCC Form 486. The erroneous conclusion to the contrary by USAC is a result of simple ministerial mistakes. Ultimately, the County confirmed that the Technology Plan had been timely approved

Since the School had an approved Technology Plan, there was no rule violation and the Notices were inappropriately issued. Based on the Commission's *Brownsville* order allowing applicants to correct ministerial errors and directing USAC to work more closely with applicants, the Commission should waive the 60-day deadline on filing an appeal with the FCC, direct USAC to accept the School's and the County's correspondence supporting the fact that the School's Technology Plan for FY2005 was accepted for filing and approved on April 6, 2006, the same day it filed its Form 486, vacate the Notices and turn off the FCC Red Light.

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SUPPLEMENT TO CONSOLIDATED REQUEST FOR REVIEW AND WAIVER

Lakeview Charter Academy (the “School”), acting through counsel and pursuant to and in accordance with Sections 54.719-54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, hereby supplements its previously-filed Consolidated Request for Review and Waiver (“Consolidated Request”).¹ Therein, the School sought review of USAC’s (a) denial of the School’s appeals²; (b) continued efforts to incorrectly recover funds from the School for Funding Year (“FY”) 2005; and (c) unjust and unfair recent FCC Red Light rule action against the School.

The Consolidated Request also seeks a waiver of Section 54.720(b) of the Commission’s rules that requires the filing of an appeal with the FCC “within sixty (60) days of issuance” of a

¹ On March 13, 2009 the School filed its Consolidated Request with the Commission seeking review of the October 17, 2008 denial of three (3) appeals filed with the Schools and Libraries Division of the Universal Service Administrative Company’s (collectively, “USAC”). A copy of the March 13, 2009 filing is attached as Exhibit 1.

² FCC Administrative Record (“FCCAR”) at 00001-3 (USAC Denial Letter dated October 17, 2008, denying the School’s Appeal for Funding Request Number (“FRN”) 1335582), FCCAR00004-6 (USAC Denial Letter dated October 17, 2008, denying the School’s Appeal for FRN 1336236); and FCCAR00007-9 (USAC Denial Letter dated October 17, 2008, denying the School’s Appeal for FRN 1335315) (collectively, the “Denial Letters”).

decision by USAC. The Denial Letters are dated October 17, 2008, and 60 days thereafter is December 16, 2008. As the facts will indicate, however, the School was inexperienced and experienced significant internal confusion due to USAC's continued acceptance and review of additional information submitted after USAC issued the Denial Letters and the School's receipt of Demand Payment Letters before the end of the 60-day period for appealing those Denials to the FCC. Good cause justifies such a waiver in this case.

I. STATEMENT OF THE SCHOOL'S INTEREST IN THE CONSOLIDATED REQUEST

The School had standing to file its appeal because Section 54.719(c) of the Commission's rules provides that, "[a]ny person aggrieved by an action taken by a division of the Administrator ... may seek review from the Federal Communications Commission."³ In this case, the School is directly aggrieved by USAC's Denial Letters and its continued efforts to collect the funds.

II. INTRODUCTION

The facts in this case unequivocally demonstrate that the School had an approved Technology Plan for FY2005 before it filed its FCC Form 486. The School timely sought and received approval of that Technology Plan from the Los Angeles County Office of Education ("County"). However, the County does not automatically issue Technology Plan approval letters. When USAC requested a copy of such an approval letter for FY2005 during an audit, the School provided the California Department of Education ("DOE") approval it received for its Technology Plan for additional state funding. That approval was received after the School filed its FCC Form 486. Unfortunately, the School provided the same approval when, after the audit, USAC again asked for a copy of the School's FY2005 Technology Plan approval.

³ 47 C.F.R. § 54.719(c).

Nearly two years later, after no further inquiry, USAC issued Notification of Improperly Disbursed Funds Letters (“Notices”) to the School based on the fact that the School did not have an approved Technology Plan in place at the time it filed its FCC Form 486. The School appealed the Notices.

The School ultimately provided reasonable and authoritative evidence that the County had approved the Technology Plan when the School filed its FCC Form 486, in the form of a letter from the County stating the School’s Technology Plan was approved before the Technology Plan was sent to the DOE for additional, non-E-rate approval. Nevertheless, USAC ignored that evidence and denied the School’s appeal on the grounds that there was no approved Technology Plan in place when the School filed its FCC Form 486.

The Commission has consistently reminded USAC to review each application on a case-by-case basis and to explain its decision-making. The Denial Letters explain that USAC received inconsistent information from the County regarding the School’s FY2005 Technology Plan approval date, but the County ultimately explained to USAC that the School’s FY2005 Technology Plan was approved by the County on April 6, 2006 upon filing, the same day the School filed its FCC Form 486. Yet USAC ignored that information.

The only question that needs to be answered is whether the School violated the Commission’s Technology Plan rules. The answer is “no.” The School had a County-approved Technology Plan when it filed its FY2005 FCC Form 486, even though it did not receive a formal approval letter from the County.

The fact that the School and the County inadvertently provided conflicting information to USAC does not require a contrary conclusion. Once they realized their unintended error, the County and the School submitted corrected information to USAC that clearly establishes that the

School's FY2005 Technology Plan was filed and approved on April 6, 2006. There was no Technology Plan rule violation. As a result, the Commission must grant the Consolidated Request.

III. KEY BACKGROUND FACTS⁴

A. The School

Lakeview Charter Academy, a Partnerships to Uplift Communities Charter School ("PUC"), is an urban, grades 6-7, public middle school located in Lakeview Terrace, California. The School is a leader in the areas of mathematics and science education. It also offers students access to art classes, physical education, homework clubs and team sports. Students are admitted on a first-come, first-served basis or by lottery if applicants exceed the number of open slots. The School does not charge admission and works with the Los Angeles Unified School District. PUC's mission is to develop and manage high quality charter schools in densely populated urban areas with overcrowded and underperforming public schools. It currently focuses on providing charter school education in the Northeast Los Angeles and the Northeast San Fernando Valley areas of California.

B. The Technology Plan Approval Process

In California, the county level offices of education are authorized by the DOE to review and approve Technology Plans for E-rate purposes. After county E-rate approval is received, the Technology Plan is forwarded to the DOE for approval for receiving funding from the State's Enhancing Education Through Technology ("EETT") program. After completing its review of the Plan for such purposes, the DOE issues an approval notice relating to that funding.

⁴ All of the facts set forth in the "Key Background Facts" section of this Supplement have been attested to, under penalty of perjury, by the School's Director of Technology, Jaime Serrano ("Declaration"). FCCAR00010.

In this case the County normally issues a formal approval letter if the school is only seeking E-rate approval for its Technology Plan or the school specifically requests such a letter. EETT Technology Plan approval letters clearly state that to use the approval letter for E-rate purposes, it must be accompanied by an “E-rate supplement document”, something that was never requested by or provided to USAC.

On April 6, 2006, the School submitted its FY2005-FY2008 Technology Plan to Mary Lou Harbison at the County.⁵ As later demonstrated Ms. Harbison approved the Plan upon receipt for E-rate purposes, but returned it to the School for additional changes in order to meet DOE’s EETT approval requirements. The DOE approved the Plan for EETT purposes on June 9, 2006.⁶

In a March 25, 2008 letter and e-mail correspondence dated August 17, 2008, the County erroneously reported to USAC that the School’s FY2005 Technology Plan was approved before April 25, 2005 and on October 24, 2006, respectively.⁷ However, the County also explained in August 14, 2008 e-mail correspondence with USAC that the School’s Technology Plan was returned for changes related to EETT approval, not E-rate approval.⁸

⁵ FCCAR00011 (Fax from Mary Lou Harbison, LACOE, to Ginna Melendez and Yvie Mandegna, USAC, Nov. 20, 2008 (“November 20, 2008 Fax”)).

⁶ FCCAR00019 (E-mail from Ed Tech Review Plan System to Jaime Serrano, June 9, 2006 (“DOE EETT Technology Plan Approval”)).

⁷ FCCAR00020 (Letter from Mary Lou Harbison, LACOE, to Jaime Serrano, Lakeview Charter Academy, Mar. 25, 2008 (“March 25, 2008 County Letter”)); FCCAR00021 (E-mail from Mary Lou Harbison, LACOE to Jaime Serrano, Lakeview Charter Academy, Aug. 18, 2008 (“August 18, 2008 E-mail”)).

⁸ FCCAR00023 (E-mail from Mary Lou Harbison, LACOE, to Jaime Serrano, Lakeview Charter Academy, Aug. 14, 2008 (“August 14, 2008 E-mail”)).

Moreover, in a November 20, 2008 fax to USAC, the County finally clearly explained that there is no formal approval process for E-rate Technology Plans and the School's Technology Plan was approved on April 6, 2006 upon receipt.⁹

C. The BearingPoint Audit

By letter dated September 28, 2006, BearingPoint notified the School that it would be visiting the School on behalf of USAC on October 18, 2006 and to have available the School's Technology Plan approval letter for FY2005.¹⁰ During the site visit, the School erroneously provided BearingPoint with a copy of the DOE EETT Technology Plan approval dated June 9, 2006, even though the School's Technology Plan had been approved for E-rate purposes by the County on April 6, 2006.¹¹ The County did not issue an E-rate approval letter for the School's Technology Plan so the only Technology Plan approval letter the School had to provide to BearingPoint was the DOE EETT approval. At the end of the visit, BearingPoint indicated to the School that all seemed to be in order and it would be in contact if it had any questions.¹²

Almost one year later, on August 23, 2007, the School received an e-mail inquiry from USAC as a follow up to the BearingPoint site visit. The e-mail stated:

During the site visit we reviewed documentation relating to Funding Year 2005, 471 #482321, FRN 1335315. Please respond to the following:

- Schools wishing to apply for Schools and Libraries support, commonly referred to as "E-rate," must first prepare a technology plan before filing a Form 470. The technology plan must be approved by a USAC-certified technology plan approver before discounted services can begin.
<http://www.universalservice.org/sl/applicants/step02/technology-planning/>

⁹ FCCAR00011-18 (November 20 Fax).

¹⁰ FCCAR00025(Letter from Debbie Cameron, Bearing Point, to Jason Roberts, Lakeview Charter Academy, Sept. 28, 2006 ("BearingPoint Letter")).

¹¹ FCCAR00001__ (Denial Letters).

¹² FCCAR00010 (Declaration).

1. Please provide a copy of the Technology Plan Approval Letter for the Technology Plan related to Fund[ing] Year 2005, which was approved by a USAC-Certified Technology Plan Approver for charter schools in California. You can find the proper approver by following the link below.
<http://www.sl.universalservice.org/reference/tech/default.asp>¹³

On September 6, 2007, the School responded to USAC via e-mail and again erroneously provided a copy of its DOE Technology Plan approval letter for EETT purposes.¹⁴

D. The Notification of Improperly Disbursed Funds Letters

Seven months later, on March 31, 2008, USAC issued Notification of Improperly Disbursed Funds Letters (“Notices”) for three FY2005 FCC Forms 471.¹⁵ Specifically, USAC sought the return of previously disbursed funding based on the erroneous conclusion that the School did not have an approved Technology Plan before it filed its FCC Form 486 for FY2005.¹⁶ Each of the Notices contained the following Disbursed Funds Recovery Explanation:

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of a review it was determined that the technology plan for this entity was not approved at the time of submission of the Form 486. Program rules require applicants to obtain approval of technology plans by parties qualified to approve technology plans, prior to submitting the Form 486, for services other than basic telecommunications service. Since this is not a request for basic telecommunications service, the technology plan needed to be approved prior to submitting the Form 486 or the start of services, whichever is earlier. Since this requirement was not met USAC

¹³ FCCAR00028-29 (E-mail from Dan Friend, USAC to Jaime Serrano, Aug. 23, 2007 (“USAC Inquiry E-mail”).

¹⁴ FCCAR00027 (E-mail from Jaime Serrano, Lakeview Charter Academy, to Dan Friend, USAC, Sept. 6, 2007).

¹⁵ See FCCAR00030-35 (Description of Services Ordered and Certification Form 471 (“FCC Form 471 File No. 482321”)); FCCAR00036-41 (Description of Services Ordered and Certification Form 471 (“FCC Form 471 File No. 482386”)); and FCCAR00042-47 (Description of Services Ordered and Certification Form 471 (“FCC Form 471 File No. 482548”).

¹⁶ See FCCAR00048-52(Notification of Improperly Disbursed Funds Letter For FY2005 for FCC Form 471 File No. 482386, Mar. 31, 2008); FCCAR00053-57(Notification of Improperly Disbursed Funds Letter For FY2005 for FCC Form 471 File No. 4482321, Mar. 31, 2008); and FCCAR00058-62 (Notification of Improperly Disbursed Funds Letter For FY2005 for FCC Form 471 File No. 482548, Mar. 31, 2008).

will seek recovery of any improperly disbursed funds from the applicant.¹⁷

This was the first correspondence that the School received from USAC regarding the Technology Plan matter since responding to USAC's post-audit request for a copy of its FY2005 Technology Plan approval letter.¹⁸ It is unclear what "thorough investigation" was conducted by USAC since the School was only contacted once about its Technology Plan approval after the BearingPoint visit.¹⁹ If USAC did conduct a "thorough investigation" then the School had a right to know what documentation and information was used by USAC to reach the conclusion that the School did not have a timely approved Technology Plan when, in fact, it did.

E. The School's Appeal To USAC

On May 1, 2008, the School filed an appeal of the Notices with USAC ("USAC Appeal").²⁰ Therein, the School stated "[w]e would like to appeal [the Notices] based on the grounds that we did have approval from our state Technology Plan approver. I am enclosing a letter I requested from Los Angeles County Office of Education as proof that we had an approved Technology Plan at the time of submission of the form [sic] 486."²¹ The County's March 25, 2008 letter (the "County Letter") attached to the USAC Appeal states that the School's Technology Plan "had been approved for E-rate purposes for the years 7/1/2005 through 6/30/2009 at the County level by [Mary Lou Harbison] as the initial part of the State Approval Process."²² And the County Letter further explained: "Approval meant that your

¹⁷ FCCAR00052-57 and 62 (Notice Funding Disbursement Report).

¹⁸ FCCAR00010 (Declaration).

¹⁹ *Id.*

²⁰ FCCAR00063 (Letter Appeal from Jaime Serrano, Lake View Charter Academy, to USAC, filed on May 1, 2008 ("USAC Appeal")).

²¹ *Id.*

²² FCCAR00020(The County Letter).

district was eligible to participate in E-rate, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) program that provides affordable access to telecommunications services for all eligible schools and libraries in the United States.”²³ These statements are wholly consistent with the School’s identification of “LA COE” on its FCC Form 486 as its USAC-certified technology plan approver.²⁴ What the County Letter did not provide is the specific date the School’s Technology Plan was approved for E-rate purposes because this date was not readily available at the time.

F. USAC’s Requests for Clarification and the County’s Responses

USAC requested additional information from the County regarding the School’s Technology Plan approval and on August 14, 2008, the County responded by explaining California’s two-step Technology Plan approval process for E-rate and EETT purposes (“August 14 e-mail”).²⁵ The County explained that E-rate Technology Plan approval letters were not generated unless a school requested E-rate only approval of its Technology Plan or specifically requested an E-rate approval letter.²⁶ In the August 14 e-mail, the County also stated that “I found that the Lakeview plan met all the criteria for Erate [sic] upon initial submission but was returned ... for changes required for EETT.”²⁷ Again, the Plan had been submitted to the County on April 6, 2006.

On August 15, 2008, USAC by e-mail requested further clarification of the Technology Plan approval process and specifically asked the County “What was the date of the LACOE

²³ *Id.*

²⁴ FCCAR00064-74 (Schools and Libraries Universal Service Receipt of Service Confirmation Form 486 (“FCC Form 486”).

²⁵ FCCAR00063(USAC Appeal).

²⁶ FCCAR00021 (August 18, 2008 E-mail).

²⁷ *Id.*

approval of the FY2005-FY2008 Technology Plan?” and “Was a FY2005 Technology Plan approval letter issued for the FY2005-FY2008 Lakeview Technology Plan? If no, please state so. If yes, please provide the FY2005 Technology Plan approval from LACOE that is referenced in the March 25, 2008 letter.”²⁸

The County responded on August 17, 2008 and erroneously stated that the School filed its Technology Plan on October 24, 2006, but did correctly state that “[t]here is no letter indicating approval for Erate [sic] purposes only.”²⁹ The County’s information was clearly erroneous and USAC should have made further inquiries to determine the correct Technology Plan approval date. The Commission’s *Brownsville* Order clearly directs USAC to work with applicants to correct Technology Plan and FCC Form 486 errors before denying funding.

G. The USAC Denial Letters

On October 17, 2008, USAC denied the School’s USAC Appeal on the following grounds:³⁰

During a site visit, the applicant was requested to provide proof that their technology plan had been approved by a certified Technology Plan Approver for Funding Year 2005. In response, the applicant provided a Technology Plan approval letter that the applicant indicated was for funding year 2005, but the approval is dated June 9, 2006, which is after Form 486 #337116 was submitted on April 6, 2006 and after the requested Service Start Date (SSD) of July 4, 2005. On appeal the applicant provided a letter dated March 25, 2008 from certified technology plan approver Los Angeles County Office of Education (LACOE) stating that the technology plan was approved prior to April 29, 2005. During Appeal review, the applicant and LACOE were given the opportunity to provide the date of the LACOE approval

²⁸ FCCAR00022-23 (E-mail from Pamela Tyler, USAC, to Mary Lou Harbison, LACOE, Aug. 15, 2008).

²⁹ FCCAR00021 (August 18, 2008 E-mail).

³⁰ FCCAR00001-2, 4-5, and 7-8 (Denial Letters).

and a copy of the technology plan approval letter if an approval letter had been issued. In response, LACOE provided approval timelines in October 2006 and then April 2006, but the applicant and LACOE failed to provide the dated technology plan approval letter. Additionally, LACOE was asked to explain the discrepancy between the original response that the plan was approved prior to April 29, 2005 and LACOE's subsequent responses, but failed to do so. A technology plan must be written at the time the Form 470 was filed and must be approved before the start of service or the filing of the Form 486, whichever is earlier. To locate a certified technology plan approver see <http://www.usac.org/sl/tools/search-tools/tech-plan-approver-locator.aspx>. You have failed to demonstrate that your technology plan had been approved by a certified technology Plan Approver before the start of service.³¹

The Denial Letters further state:

You certified on your FCC Form 486 that the technology plan for the services received as indicated on the form was approved. During the review of your application, however, USAC determined that the technology plan you provided was not approved before receiving services as required by program rules. In your appeal, you did not show that USAC's decision was incorrect. Consequently your appeal is denied.

As the County explained to USAC in the March 25, 2008 letter and e-mail correspondence in August, 2008, the County was not required to and did not issue an E-rate Technology Plan approval letter to the School. In its USAC Appeal, the School stated "I am enclosing a letter I requested from Los Angeles County [Office] of Education as proof that we had an approved Technology Plan at the time of submission of the form [sic] 486."³² According to USAC's own records, the County is a certified Technology Plan approver for schools located in Los Angeles County, California.³³ Therefore, USAC should have accepted the County's

³¹USAC did not carefully review the material submitted by the County. In the County's August 17, 2009 e-mail to USAC, the County explained that "[t]here is no letter indicating approval for Erate purposes only." FCCAR00021 (August 18 E-mail).

³² FCCAR00020 (USAC Appeal).

³³ FCCAR00078-80 (List of Certified Technology Plan Approvers).

explanation that it does not routinely issue E-rate Technology Plan approval letters and the School's Technology Plan was had been approved for E-rate purposes.

H. The Demand Payment Letters

After the Denial Letters and before the 60-day period for filing an appeal thereof with the FCC had expired, USAC sent the School two Demand Payment Letters, on November 10, 2008³⁴ and on December 11, 2008,³⁵ respectively (collectively, the "Demand Payment Letters"). The School respectfully submits that USAC should have delayed sending these Letters until the time for filing an appeal of the Denial Letters with the FCC had expired, since the filing of an appeal stays USAC's collection efforts.³⁶

Under USAC's procedures for initial appeals of such Notices, "[i]f the applicant and/or service provider does not appeal the Notification Letter within 60 days, USAC issues the First Demand Payment Letter on the 61st day."³⁷ While there are no express FCC rules that set forth the procedures for when Demand Payment Letters should be issued by USAC if the period for filing an FCC appeal of a USAC action has not yet expired, there is no reason that the situation should be handled any differently than with the appeal of the Notices to USAC. The lack of clear FCC guidance and procedures creates confusion, inconsistency and uncertainty, as it did in this case.

³⁴ FCCAR00081-84 (Demand Payment Letter FY2005 for FCC Form 471 File No. 482548, Nov. 10, 2008); FCCAR00085-88 (Demand Payment Letter FY2005 form FCC Form 471 File No. 482321, Nov. 10, 2008); FCCAR00089-92 (Demand Payment Letter FY2005 FCC Form 471 File No. 482386, Nov. 10, 2008)(collectively, "First Demand Payment Letters").

³⁵ FCCAR00093-97 (Demand Payment Letter Second Request FY2005 for FCC Form 471 File No. 482386, Dec. 11, 2008); FCCAR00098-102 (Demand Payment Letter Second Request FY2005 for FCC Form 471 File No. 482321, Dec. 11, 2008); FCCAR00102-106 (Demand Payment Letter Second Request FY2005 for FCC Form 471 File No. 482548, Dec. 11, 2008)(collectively, the "Second Demand Payment Letters").

³⁶ 47 C.F.R. § 1.1910(b)(3)(i).

³⁷ Schools and Libraries Program, Universal Service Administrative Company, "Semi-Annual Audit Recovery Report", CC Dkt. No. 02-6 (Filed on Mar. 31, 2009) at p.1 ("USAC Report").

The Demand Payment Letters required payment within 30 days of the date of each letter of the allegedly improperly disbursed funds. The Letters offered the same erroneous explanation for collecting the improperly disbursed funds:

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of a review it was determined that the technology plan for this entity was not approved at the time of submission of the Form 486. Program rules require applicants to obtain approval of technology plans by parties qualified to approve technology plans, prior to submitting Form 486, for services other than basic telecommunications service. Since this is not a request for basic telecommunications service, the technology plan needed to be approved prior to submitting the Form 486 or the start of services, whichever was earlier. Since this requirement was not met USAC will seek recovery of any improperly disbursed funds from the applicant.³⁸

The Demand Payment Letters were erroneous because the School did have an approved Technology Plan at the time it submitted its FCC Form 486. As the County explained to USAC, the School's Technology Plan was approved upon initial submission on April 6, 2006.³⁹

I. The County's Request for Reconsideration of the Denial Letters

On November 20, 2008, the County asked USAC to reconsider the Denial Letters. In support of its request, the County offered the following explanation for the information it had previously submitted to USAC:

I understand that you have denied the appeal for Lakeview Charter School in Los Angeles and am very distressed as I believe it was my failure to provide adequate documentation that may have led to this decision. If you remember, my documentation was specific to EETT as there was no formal process in place at that time for Erate [sic] approval. I did explain that it was approved for Erate [sic] purposes right away but needed changes for EETT. Appendix C is the rubric for CA EETT. Jaime Serrano has sent me the attached

³⁸ FCCAR00088, 92, 102 and 107 (Demand Payment Letter Funding Disbursement Reports).

³⁹ FCCAR00021 (August 18 E-mail).

document sent to him by me which establishes the Date Received as 4/6/06. This is my document which I had not previously located. It means it was approved on the date received. That date should be 4/6/06. Please reconsider the appeal based on this new information. My apologies for this confusion.”⁴⁰

In e-mail correspondence dated November 26, 2008, the School followed up with USAC on the County’s request for reconsideration and provided USAC with updated documents that accurately reflect the School’s Technology Plan approval date for E-rate purposes.⁴¹ On the same day, USAC acknowledged receipt of the additional information and stated “we will respond once our review is complete.”⁴²

J. USAC’s Response to the County’s Reconsideration Request

On December 1, 2008, without any further inquiry, USAC responded to the School via e-mail stating “we do not find this information sufficient to approve the appeal.”⁴³ At a minimum, USAC should have explained why it rejected the School’s additional information and provided a basis for reaching its conclusion. As the Commission has repeatedly reminded USAC, USAC is required to explain its decisions and provide applicants an opportunity to fix non-substantive ministerial or procedural errors.⁴⁴

⁴⁰ FCCAR00011 (November 20 Fax).

⁴¹ FCCAR00108-117 (E-mail from Jaime Serrano, Lakeview Charter Academy, to Gina Melendez and Yvie Mandange, USAC, Nov. 26, 2008).

⁴² FCCAR00118 (E-mail from Ginna Melendez, USAC, to Jaime Serrano, Lakeview Charter Academy, Nov. 26, 2008).

⁴³ FCCAR00119 (E-mail from Ginna Melendez, USAC, to Jaime Serrano, Lakeview Charter Academy, Dec. 1, 2008).

⁴⁴ *In re Requests for Review or Waiver of Decisions of the Universal Service Administrator by Brownsville Independent School District, Brownsville, TX; et al., Schools and Libraries Universal Support Mechanism, Order*, 20 FCC Rcd 6045 ¶¶ 1-2 (2007) (“*Brownsville*”).

K. The Application of the FCC Red Light Rule

In addition, USAC's errors have precipitated the recent unannounced application of the FCC's Red Light rule to the School, again based on the erroneous conclusion regarding the Schools Technology Plan for FY2005. The application of this draconian measure based on the School's simple mistake of submitting conflicting information is unfair. It is having a cascading affect with respect to subsequent FY applications and depriving the School of the opportunity to receive deserved E-rate support.

IV. STANDARD OF REVIEW

USAC's authority to administer the E-Rate Program is limited to implementing and applying the Commission's rules and the Commission's interpretations of those rules as found in agency adjudications.⁴⁵ USAC is not empowered to make policy, interpret any unclear rule promulgated by the Commission,⁴⁶ or to create the equivalent of new guidelines.⁴⁷ USAC is responsible for "administering the universal support mechanisms in an efficient, effective, and competitively neutral manner."⁴⁸ The Commission's review of the Denial Letters is *de novo*, without being bound by any findings of USAC⁴⁹

Such a review will reveal that the Denial Letters are not supported by FCC law or policies. Most fundamentally, USAC failed to explain why it decided to ignore the County's un rebutted representation that that the School's Technology Plan had been approved on April 6, 2006, when the School's FCC Form 486 was filed. This action flies in the face of repeated

⁴⁵ 47 C.F.R. § 54.702(c).

⁴⁶ *Id.*

⁴⁷ *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n, Inc., Third Report and Order*, 13 FCC Rcd 25058, 25066-67 (1998).

⁴⁸ 47 C.F.R. § 54.701(a).

⁴⁹ 47 C.F.R. § 54.723.

Commission admonitions that applicants should have the opportunity to correct their mistakes, particularly those of a clerical or ministerial nature.

V. THE CONTROLLING LAW

The Commission addressed Technology Plan requirements in the E-rate Program in its *Brownsville* Order.⁵⁰ In *Brownsville*, the Commission granted 32 appeals filed by schools and libraries for appeals of USAC decisions based on alleged Technology Plan rule violations.⁵¹ The Commission determined that it was appropriate to waive its Technology Plan rules because some of the violations are “procedural, not substantive” and for other appeals, “rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest”⁵²

Most important to the Consolidated Request is the fact that in *Brownsville* the Commission granted appeals to applicants who had complied with the Commission’s Technology Plan rules, *but were unable to provide the requested documentation to USAC upon request.*⁵³ Thus, the Commission clearly recognized that a waiver is appropriate in the case of such a procedural, non-substantive, violation.

In fact, the Commission’s *Brownsville* decision includes a directive to USAC to broaden its outreach efforts to assist applicants in better understanding the Commission’s Technology Plan requirements. Specifically, the Commission stated:

In addition, beginning with applications for Funding Year 2007, we direct USAC to enhance its outreach efforts as described herein

⁵⁰ *Brownsville*, ¶¶ 1-2.

⁵¹ *Id.*, ¶1.

⁵² *Id.*, ¶¶8-9.

⁵³ *Id.*, ¶8 (“USAC denied their applications not because the applicants refused to develop or obtain approval of their technology plans, but because Petitioners failed to show that they had met the deadlines when USAC requested technology plan documentation. . . . We find that, given these violations are procedural, not substantive, rejection of these Petitioners’ E-rate applications is not warranted.”).

to better inform applicants of the technology plan requirements and to provide applicants with a 15-day opportunity to provide correct technology plan documentation.⁵⁴

In addition to providing applicants with additional time to correct Technology Plan documentation, the Commission directed USAC to “inform the applicant promptly in writing of any and all deficiencies, along with a clear and specific explanation of how the applicant can remedy those deficiencies.”⁵⁵ Clearly the Commission’s intent was to have USAC work more closely with applicant to resolve Technology Plan issues before an application is denied.⁵⁶ Applying the same logic to audit situations, USAC should be working with applicants to resolve Technology Plan issues before the funds recovery process is initiated.

The School is due the same consideration from USAC because the Commission directed USAC to apply the Commission’s new Technology Plan education and deficiency notice requirements to “all pending applications and appeals.”⁵⁷ Clearly the School should have been notified after the BearingPoint audit by USAC that there was a problem with its FY2005 Technology Plan approval before USAC initiated the funds recovery process. USAC requested a copy of the School’s FY2005 Technology Plan approval letter, but did not give the School an opportunity to explain the two-step Technology Plan approval process in California. Had USAC asked the School after the audit prior to issuing the Notices to explain the Technology Plan approval process, the School would have explained that the Technology Plan approval provided to BearingPoint was for EETT purposes and the School received E-rate approval of its

⁵⁴ *Id.*, ¶1.

⁵⁵ *Id.*, ¶1-2 (emphasis added).

⁵⁶ *Id.*, ¶1-2 (“The opportunity for applicants to submit technology plan information that cures minor errors will also improve the efficiency and effectiveness of the Fund. . . . If USAC helped applicants provide correct technology plan documentation initially, USAC should be able to reduce the money it spends on administering the fund because fewer appeals will be filed protesting the denial of funding for these types of issues.”).

⁵⁷ *Id.*, ¶1 n.2.

Technology Plan from the County upon filing on April 6, 2006, the same day it filed its FCC Form 486.

VI. ARGUMENT

A. The School Complied With the Commission's Technology Plan Rules

The School received approval for its FY2005-2009 Technology Plan the same day it filed its FCC Form 486. The School properly certified in its FCC Form 486 that it had an approved Technology Plan. The School complied with the Commission's Technology Plan rules. The School should not be penalized where the County responsible for approving Technology Plans for E-rate purposes did not, as a rule, issue approval letters before forwarding Technology Plans to the DOE for additional, EETT approval. The County only issued letters at the request of applicants or if the applicant was only seeking Technology Plan approval for E-rate purposes.

After the Denial Letters, the School and the County realized that they had submitted conflicting information to USAC and submitted corrected information to USAC that clearly indicated that the County approved the School's Technology Plan upon receipt on April 6, 2006, the same day the FCC Form 486 was filed. For reasons USAC did not explain, it reviewed the corrected, supplemental information, but concluded it was not sufficient to warrant reversing the Denial Letters. This caused further confusion at the School since it was receiving Demand Payment Letters at the same time.

This is exactly the kind of situation the Commission concluded in *Brownsville* warranted a waiver of the Commission's Technology Plan rules. The School complied with the Commission's Technology Plan rules, but inadvertently provided inaccurate information to USAC, which was further complicated by the fact that the County also submitted inaccurate information to USAC. In *Brownsville*, the Commission concluded the inability to provide

Technology Plan approval documentation to USAC is a procedural, not substantive error and a waiver of the Commission's Technology Plan rules is appropriate.⁵⁸

USAC even reviewed the corrected information submitted by the School and the County after the Denial Letters, but without explanation, concluded the information was not sufficient to warrant a reversal of the conclusion of those Letters. Since USAC decided to review the additional information, it should have provided a detailed explanation why the corrected information was not sufficient or why it could not apply the Commission's *Brownsville* order, which clearly permitted USAC to accept the documentation establishing the correct Technology Plan approval date.

B. The School's Technology Plan Errors Were Procedural, Not Substantive

On its website USAC describes the Commission's Technology Plan requirements.⁵⁹ For example, USAC explains that schools and libraries need to develop a Technology Plan in order to apply for E-rate funding. The School did this. Technology Plans must include five elements and must be approved by a USAC-certified Technology Plan approver before services are received.⁶⁰ The School's Technology Plan met this requirement. In California, USAC-certified Technology Plan approvers are the state Department of Education and each county's Office of Education. Technology Plans that are approved for EETT funding are also approved for E-rate purposes if the Technology Plan is accompanied by a current year operating budget.⁶¹ The School was never asked by USAC if it had a current operating budget so USAC could use the EETT approval of the School's Technology Plan for E-rate purposes.

⁵⁸ *Brownsville*, ¶¶8-9.

⁵⁹ USAC, "Step 2: Develop a Technology Plan," available at <http://www.universalservice.org/sl/applicants/step02/>.

⁶⁰ USAC, "Step 2: Develop a Technology Plan," available at <http://www.universalservice.org/sl/applicants/step02/>.

⁶¹ USAC, "Step 2: Frequently Asked Questions About Technology Planning," available at <http://www.universalservice.org/sl/applicants/step02/faq-about-technology-planning.aspx>.

The School filed its FY2005 Technology Plan with the County on April 6, 2006. The School's Technology Plan was approved by the County on the same day and the County started reviewing it for EETT Technology Plan requirements upon filing. The County notified the School that a couple of changes were needed to its Technology Plan for EETT approval purposes but immediately accepted the Technology Plan for E-rate purposes. At all times, the School had an approved FY2005 Technology Plan for E-rate purposes as of April 6, 2006.

The County does not issue Technology Plan approval letters unless requested by an applicant or the Technology Plan was only submitted for E-rate approval. When the School was audited by BearingPoint, it provided to BearingPoint the only Technology Plan approval letter it had, which was DOE's approval of the School's Technology Plan for EETT purposes that admittedly occurred after the School received County approval of its Technology Plan for E-rate purposes on April 6, 2006.

The School made procedural, not substantive, errors by submitting inconsistent information to USAC. The problem was compounded by the fact that the County also submitted incorrect information to USAC and did not adequately explain why there were different Technology Plan approval dates for the School's FY2005 Technology Plan. Once the School received the Denial Letters and identified the errors in the information submitted, it worked with the County to submit corrected information to USAC in support of its USAC Appeal.

In *Brownsville*, the Commission directed USAC to "inform the applicant promptly in writing of any and all [technology plan] deficiencies, along with a clear and specific explanation of how the applicant can remedy those deficiencies."⁶² In this instance, USAC did review the additional information submitted by the School and the County, but did not provide a "specific

⁶² *Id.*, ¶1-2 (emphasis added).

explanation” of why the information was insufficient. The School was trying to remedy a procedural, not substantive, error that would have stopped the funds recovery process that is now even causing the School’s applications for funding for later years to be dismissed.⁶³ USAC is trying to recover funds from the School due to procedural errors related to the submission of evidence that the School’s FY2005 Technology Plan was approved before it filed its Form 486. There has been no finding of fraud, waste or abuse or that the FY2005 funds were used for an inappropriate purpose.

C. USAC Did Not Correctly Apply Its Audit Procedures to the School

The Commission’s *Commitment Adjustment Order* directed USAC to recover improperly disbursed funds due to fraud, waste or abuse of E-rate Program rules.⁶⁴ Audits are a permitted tool for doing so.⁶⁵ However, in conducting audits USAC has its own procedures that should be followed.

After reviewing the results of an audit, USAC states that it “may determine that additional outreach is necessary and may contact the applicant and/or service provider depending on the nature of the audit findings.”⁶⁶ Here, the School was contacted by USAC and asked for a copy of its Technology Plan approval letter. The School provided the only Technology Plan approval letter it had, the one approving its Technology Plan for EETT purposes, not E-rate purposes.

⁶³ The FCC has turned on the Red Light for the School’s E-rate applications and dismissed an application filed for Funding Year 2008 on that basis. The School has appealed that dismissal action to the Commission as well.

⁶⁴ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Order*, 18 FCC Rcd 27090 (1999) (“*Commitment Adjustment Order*”), *on reconsideration Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism, Order on Reconsideration and Fourth Report and Order*, 19 FCC Rcd 15252 (2004).

⁶⁵ 47 C.F.R. § 54.516.

⁶⁶ USAC Report at p. 1.

This was the extent of USAC’s follow-up even though the approval letter states “[t]his approval e-mail will serve as official approval certification for any state-funded program requiring a state-approved Technology Plan as well as for the federal E-rate Program, with the addition of the e-rate supplement document.”⁶⁷ USAC never asked the School for a copy of its “E-rate supplement document.” It only erroneously concluded that the School did not have an approved Technology Plan at the time it filed its FCC Form 486. This is simply incorrect.

The USAC Report states that, after an audit “USAC management will only contact the applicant and/or service provider if: (1) the party responsible for the rule violation was not given an opportunity to respond to findings during the audit, (2) the findings are complex and further explanation is warranted, or (3) it is unclear if the program rules have been violated.”⁶⁸ First, the School was never given a chance to respond to any findings during the audit. BearingPoint stated during the audit that everything seemed to be in order.⁶⁹ Second, USAC asked the School for a copy of its Technology Plan approval letter, but that was the end of the inquiries it made to the School.⁷⁰ USAC never requested a copy of the “E-rate supplement document” that would have allowed the EETT approval letter to be used for E-rate purposes. Based on USAC’s own procedures, it should have made additional inquiries before determining the School did not have an approved Technology Plan when it filed its FCC Form 486.

Since the School was not notified by USAC when it completed “any additional outreach” or the date the USAC Board of Directors “deem[ed] [the] audit report final,” the School does not know if the Notices it received were timely issued by USAC. The USAC Report states

⁶⁷ FCCAR00019 (DOE EETT Technology Plan Approval).

⁶⁸ USAC Report at p. 1.

⁶⁹ FCCAR00010 (Declaration).

⁷⁰ FCCAR00028-29 (USAC Inquiry E-mail).

Notification of Recovery of Improperly Disbursed Funds letters or Notification of Commitment Adjustment Letters are to be issued 30 days from “the USAC Board of Directors deeming an audit report final or USAC completing any additional outreach...”⁷¹ Again, it is unclear if USAC followed its stated procedures.

It is USAC’s stated policy to delay issuing Demand Payment Letters until the 60-day period for filing an appeal with USAC has ended. There is no reason that a different procedure should be applied in the case of potential appeals to the FCC. There is certainly no FCC requirement that USAC issue both of the Demand Payment Letters before the School’s 60-day period for filing an appeal with the FCC of the Denial Letters. The School was rightfully confused by USAC’s actions and the limited availability of school personnel due to the upcoming December holidays.

The USAC Report states: “[I]f the applicant and/or service provider does not appeal the Notification Letter within 60 days, USAC issues the First Demand Payment Letter on the 61st day.”⁷² USAC issued the First Demand Payment Letters on November 10, 2008, only 24 days after the USAC Denial. This is much sooner than the purported 61 days that USAC should have waited before issuing Demand Payment Letters. Since the School did not immediately respond to or appeal the First Demand Payment Letters, the USAC Report states:

[A] Second Demand Payment Letter is sent and the Red Light is turned on for that applicant and/or service provider. The Commission allows applicants and/or service providers to enter into payment plan arrangements with USAC to pay the recovery amount.⁷³

The School was confused and overwhelmed by the Second Demand Payment Letters because USAC had reviewed additional information after the Denial Letters. The School

⁷¹ USAC Report at p.1.

⁷² *Id.*

⁷³ *Id.*

contacted a consultant but, with the upcoming December holidays and School winter break, personnel were unavailable to resolve the Denial Letters and Demand Payment Letters.⁷⁴ The School received the Second Demand Payment Letters on December 11, 2008, five days before the end of the 60-day period for filing an appeal with the FCC of the Denial Letters. Yet applying the procedures USAC follows with respect to initial appeals of its decisions the School should not have received the First Demand Payment Letters until December 17, 2008, the 61st day after the USAC Denial. At this point, the School received the Second Demand Payments Letter and, due to inexperience, the School's winter break and the upcoming holidays, was unable to make arrangements with the necessary personnel to appeal the Denial Letters or understand the implications of the Demand Payment Letters. If USAC had applied its own procedures, then the School would have been sent the First Demand Payment Letters on December 17, 2008, and the Second Demand Payment Letters on January 16, 2009. Both the First and Second Demand Payment Letters would have been received with enough time after the holidays for School personnel to be available and seek the advice of counsel.

The USAC Report further states:

If the applicant and/or service provider does not respond to the Second Demand Payment Letter or does not make satisfactory arrangement to repay the funds within 60 days of the Second Demand Payment Letter, USAC will advise the Commission of that fact, and the debt will be transferred to the Commission under the provisions of the Debt Collection Improvement Act (DCIA).⁷⁵

The School did not timely file an appeal of the Denial Letters or make payment arrangements with USAC within 60 days of the Second Demand Payment Letters because it was still trying to understand the Demand Payment Letter process and why its USAC Appeal was

⁷⁴ FCCAR00010 (Declaration).

⁷⁵ USAC Report at p. 2.

denied. Counsel was not secured until late February 2009 and after documents were gathered and reviewed, the Consolidated Request and this Supplement were prepared and filed with the Commission with a request for waiver of the 60-day deadline for filing timely appeals.

The USAC Report is also misleading and contrary to the Commission's Red Light rules because the USAC Report states "[i]f an appeal is filed either with USAC or the Commission, the recovery process is held in abeyance pending resolution of the appeal."⁷⁶ In spite of USAC's procedure to the contrary, the recovery process continues against the School.

The School recently received an invoice from the Commission demanding payment for the Notices even though the Notices are based on USAC's erroneous conclusion that the School did not have an approved Technology Plan when it filed its FY2005 FCC Form 486. If USAC had worked more closely with the School during the audit or after the School filed its USAC Appeal, this situation could have been resolved before the Denial Letters were issued. USAC did not follow its own procedures or the Commission's *Brownsville* Order and now an inexperienced School is faced with trying to stay the recovery process due to a simple procedural error, which it has tried in good faith to remedy consistent with the Commission's processes.

VII. REQUEST FOR WAIVER

A. The Law

The Commission's rules allow waiver of a Commission rule "for good cause shown."⁷⁷ The Commission has extended this waiver authority to limited waivers of USAC rules. For example, in the *Bishop Perry Order*, the Commission noted that it "has vested in USAC the responsibility of administering the application process for the schools and libraries universal

⁷⁶ USAC Report at p. 2.

⁷⁷ 47 C.F.R. § 1.3.

service support mechanism.”⁷⁸ Pursuant to that authority, USAC developed procedures relating to the application and appeals process.⁷⁹ Thus, in *Bishop Perry*, the Commission applied the 47 C.F.R. § 1.3 waiver rule to allow a limited waiver of USAC procedures.⁸⁰

The FCC has established the following guidance for determining whether waiver is appropriate:

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.

Requests for Review by Richmond County School District, 21 FCC Rcd 6570, 6572 ¶5 (2006 (internal references omitted) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972)).

B. Request for Waiver of the Commission’s 60-Day Deadline for Timely Filing Appeals

The School seeks a waiver of Section 54.720(a) the Commission’s rules which states that “[an] affected party requesting review of an Administrator decision by the Commission pursuant to §54.719(c), shall file such a request within sixty (60) days of the issuance of the decision by a division or Committee of the Board of the Administrator.”⁸¹

⁷⁸ *Request for Review of Decision by the Universal Service Administrator by Bishop Perry Middle School, Order*, 21 FCC Rcd 5316, 5618 ¶4 (2006)(“*Bishop Perry Order*”).

⁷⁹ The *Bishop Perry Order* dealt with USAC application procedures known as “minimum processing standards.” *Id.*

⁸⁰ *Id.*

⁸¹ 47 C.F.R. § 54.720(a).

The Commission should waive its 60-day deadline for filing appeals rule, because there is no evidence of waste, fraud, or abuse, or failure to comply with the core program requirements, and the School complied with the Technology Plan rule requirements. The funds have already been disbursed and put to good use by the School to provide much needed services to its students. The mistakes at the heart of this case are procedural, not substantive, errors and, thus, a limited waiver would be in the public interest. The School is inexperienced and there was significant internal confusion at the time the appeal was due because USAC denied the School's appeal but still accepted new information, the School was receiving Demand Payment Letters even though the time for filing an appeal had not yet expired, and USAC did not follow its audit procedures. The School's Technology Department is understaffed, overwhelmed and is shared with other Partnerships to Uplift Communities Charter schools.

A waiver of the filing deadline will promote the goals of Section 254(h) of the Communications Act of 1934, as amended. Section 254(h) permits schools to receive discounted eligible services at reduced rates. The discounted services received by the School have permitted it to be able to obtain affordable access to eligible services that it would not otherwise be able to afford. The School is able to offer its students internet access and other telecommunications services because it is able to obtain discounted services through USAC. The School is a public charter academy with limited financial resources. If the waiver request is denied, the School may need to reduce its services or accept fewer students in order to make the funds available to repay the discounted amount it correctly received for eligible services it purchased.

Strict compliance with the Commission's rules would not be in the public interest. The School has otherwise complied with the Commission's rules and there is no evidence of waste, fraud or abuse. A waiver of the filing deadline is appropriate in this limited circumstance to

prevent undue financial hardship and permit the School to continue offering much needed services to its students. A waiver of filing deadline will not adversely affect any other applicant. The Commission may also taken into consideration “hardship, equity, or more effective implementation of overall policy on an individual basis.”⁸² In this case, deviation from the Commission’s rules would better serve the public interest than strict application of the appeal filing deadline.

C. Limited Request for Waiver of the Commission’s Technology Plan Rules

Should the Commission decide not to accept corrected information regarding the School’s FY2005 Technology Plan submission and approval date demonstrating that the School complied with the FCC’s Technology Plan rules, the School respectfully requests a limited waiver of Commission’s Technology Plan rules.⁸³ As the facts indicate, the School is inexperienced and experienced significant internal confusion due to USAC’s continued acceptance and review of additional information submitted after USAC denied the School’s appeals, the School’s receipt of Demand Payment Letters before the end of the 60-day period for filing a timely appeal with the FCC, and USAC’s precipitation of the application of the FCC’s Red Light rule despite the fact that there was no rule violation.

Such a waiver would be consistent with past Commission precedent related to E-rate funding and clerical errors. In *Bishop Perry*, the FCC granted 196 appeals of decisions denying funding due to “clerical or ministerial errors in the application.”⁸⁴ In that case, the FCC found good cause to waive the minimum processing standards established by USAC, finding that “rigid

⁸² *Request for Waiver of the Decision of the Universal Service Administrator by Owensboro Public Schools, Owensboro, Kentucky, Order*, 21 FCC Rcd 10047, ¶5 (2006).

⁸³ 47 C.F.R. § 54.508(c) (stating applicants must confirm on FCC Form 486 that their technology plan has been approved before they started to receive the services in the plan).

⁸⁴ *Bishop Perry* at 5316 ¶1.

compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest.”⁸⁵ Many of the appeals in *Bishop Perry* involved staff mistakes or mistakes made as a result of staff not being available.⁸⁶ The Commission granted the waivers for good cause, noting that:

[T]he primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts. Even when a school official has learned how to correctly navigate the application process, unexpected illnesses or other family emergencies can result in the only official who knows the process being unavailable to complete the application on time. Given that the violation at issue is procedural, not substantive, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants.⁸⁷

The Commission directed USAC to allow applicants the opportunity to fix ministerial and clerical errors and concluded that such an opportunity would “improve the efficiency and effectiveness of the Fund.”⁸⁸ The School clearly falls into the same category, due to the fact that the County and the School inadvertently provided conflicting information to USAC and USAC did not understand that California has a two-step Technology Plan approval process and the first-step is County level approval of Technology Plans for E-rate purposes. Moreover, the overwhelming contemporaneous evidence proves that the County and the School took steps to

⁸⁵ *Id.* at 5321 ¶11. The Commission departed from prior Commission precedent, noting that the departure was, “warranted and in the public interest.” *Bishop Perry* at 5319 ¶9. The Commission noted that many of the rules at issue were procedural, and that a waiver is consistent with the purposes of Section 254, which directs the Commission to “enhance ... access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries.” *Id.*

⁸⁶ *Id.* at 5322 ¶13.

⁸⁷ *Id.* at 5323 ¶14.

⁸⁸ *Id.* at 5327 ¶23.

correct their errors and establishes that the School filed its Technology Plan on April 6, 2006. Thus, the errors in this case were procedural, not substantive, and there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.

The facts of this case are similar, if not identical, to the type of mistakes and clerical errors related to Technology Plans that the Commission found forgivable in *Brownsville*. In *Brownsville*, the Commission concluded that

[T]here is good cause shown to waive the applicable technology plan rules and to grant Petitioner's requests for review. As noted above, several Petitioners committed clerical or ministerial errors, such as providing the wrong technology plan documentation. As we noted in *Bishop Perry*, we do not believe that such minor mistakes warrant the rejection of these Petitioners' E-rate applications, especially given the requirements of the program and the thousands of applications filed each year. Additional Petitioners missed deadline for developing or obtaining approval of their technology plans. USAC denied their applications not because the applicants refused to develop or obtain approval of their technology plans, but because Petitioners failed to show that they had met the deadlines when USAC requested technology plan documentation. Indeed, many Petitioners thought they had complied with the deadlines and provided copies of their technology plans or approval letters when they responded to subsequent inquiries by USAC staff, when they appealed the funding decisions with USAC, or when they appealed the funding decisions with the Commission. We find that, given that these violations are procedural, not substantive, rejection of these Petitioners' E-rate applications is not warranted."⁸⁹

First, the School in this case has admitted to inadvertent, clerical error by acknowledging that the letter it submitted with the USAC Appeal included the incorrect date.⁹⁰ The School and the County provided USAC with corrected Technology Plan filing and approval information after the Denial Letters and USAC reviewed this information but did not explain why it was

⁸⁹ *Brownsville*, ¶8 (italics in original).

⁹⁰ FCCAR00010 (Declaration).

insufficient to reverse the Denial Letters even though the School's FCC Form 486 states the County, not the DOE, approved the School's Technology Plan. Finally, because there is not one scintilla of evidence that the School engaged in any activity that involved a misuse of funds or abuse of E-rate Program rules, the Commission should apply its ruling in *Brownsville* with equal weight and force to the facts outlined in this Consolidated Request.

In *Lincoln*, the Commission granted a request for review based on miscommunications between the applicant and USAC. Specifically, the Commission concluded that the applicant met the Commission's Technology Plan rule requirements, but for a miscommunication with USAC, its funding was reduced anyways. The Commission noted the following:

USAC reduced the District's E-rate funding not because the District failed to develop and obtain approval of a technology plan, but because the District provided USAC with a copy of the wrong technology plan. This error resulted from a miscommunication between USAC and the District. Although applicants must make every effort to ensure that the documentation they file with USAC complies with E-rate program requirements and request by USAC for additional information, we remind USAC that it has an obligation to conduct a reasonable inquiry into the filings and materials that USAC itself has in its possession. Moreover, we find that the actions we take here to provide relief from these types of errors in the application process will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended, by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services. We therefore conclude that a reduction in the District's E-rate funding is unwarranted and contrary to the public interest. We grant the District's Request for Review and remand its application to USAC for further consideration consistent with this Order.⁹¹

The School's situation is very similar to the type of miscommunications in *Lincoln*. The School provided to USAC the only Technology Plan approval letter it had even though that letter

⁹¹ *Requests for Review of Decision of the Universal Service Administrator by School Administrative District 67 Lincoln, Maine, Schools and Libraries Universal Service Support Mechanism, Order*, 21 FCC Rcd 9267 (2006).

approved its Plan for EETT, not E-rate purposes. Through a series of later miscommunications, the School and the County provided to USAC different Technology Plan approval dates that were inconsistent with the School's FCC Form 486 and the approval date in the EETT Technology Plan approval letter. At all times, USAC had in its possession the School's FCC Form 486 which said the County approved its Technology Plan even though it was only receiving information from the County about the EETT Technology Plan approval process. As in *Lincoln*, USAC should have made additional inquiries to the County so USAC was able to better understand the County-level Technology Plan approval process. Had USAC made these additional inquiries, the County and the School would have been able to explain the County-level Technology Plan approval process and remedy the inconsistent information inadvertently provided to USAC about the School's Technology Plan approval. When the School did identify the problems with the information submitted to USAC, it was after the Denial Letters but the School and the County still tried to remedy the information submitted by making a further submission. USAC reviewed this submission, but never explained why the additional information that explained the School's Technology Plan approval dates was insufficient to reverse the Denial Letters. Since there is no evidence the School engaged in any misuse of funds or an abuse of E-rate Program rules, the Commission should apply its ruling in *Lincoln* with equal weight and force to the facts outlined in the Consolidated Request.

VIII. CONCLUSION AND REQUEST FOR RELIEF

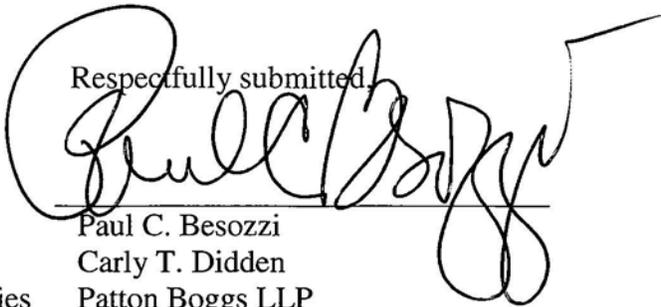
First, the Commission should waive its 60-day deadline for filing appeals rule, because there is no evidence of waste, fraud, or abuse, or failure to comply with the core program requirements, and the School complied with the Technology Plan rule requirements. The funds have already been disbursed and put to good use by the School to provide much needed services

to its students. The mistakes at the heart of this appeal are procedural, not substantive, errors and, thus, a limited waiver would be in the public interest. The School is inexperienced and there was significant internal confusion at the time because USAC denied the School's appeal but still accepted new information, the School was receiving Demand Payment Letters even though the time for filing an appeal with the FCC had not yet expired, and USAC did not follow its audit procedures. At all times the School complied with the Commission's Technology Plan rules and there is no evidence of waste, fraud or abuse.

Second, the School requests the Commission to make a finding that USAC did not properly apply its Technology Plan rules and based on the evidence submitted, there has been no Technology Plan rule violation. The School respectfully requests that the Commission grant this Consolidated Request and direct USAC to reverse the Notices within 30 days and immediately cease all collection efforts of those appropriately remitted funds. Moreover, the Commission should immediately discontinue application of the FCC's Red Light rule against all pending and future E-rate applications of the School until the Notices are reversed and to the extent that application of the FCC's Red Light rule has precipitated dismissal of other School applications reinstate those applications pending the disposition of this Consolidated Request.

In the spirit of the *Bishop Perry*, *Brownsville*, and *Lincoln* Orders, the Commission should grant the Consolidated Request. The School has demonstrated good cause for a limited waiver of the Commission's 60-day appeal filing deadline and Technology Plan rules: the mistakes made with respect to the incorrect Technology Plan submission and approval dates were procedural, inadvertent, and resulted in part from inexperience and California's two-step Technology Plan approval process; there is no evidence of waste, fraud, or abuse, and the School

complied with core program requirements; and the public interest would be served by permitting the School to keep the much-needed E-rate funds.

Respectfully submitted,


Ref. Rodriguez, Ed.D.
Lakeview Charter Academy
A Partnerships to Uplift Communities
Charter School
111 N. First Street, Suite 100
Burbank, CA 91204
(818) 559-7699

Paul C. Besozzi
Carly T. Didden
Patton Boggs LLP
2550 M Street NW
Washington, DC 20037
(202) 457-6000

*Counsel to Partnerships to Uplift
Communities Charter School*

Dated: June 30, 2009

Exhibit 1



2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

March 13, 2009

Cynthia B. Schultz
Direct: 202-457-6343
cschultz@pattonboggs.com

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Request for Review and Waiver, Docket No. 02-6

School	BEN	471 App. No.	FRN	Funding Year
Lakeview Charter Academy	16021236	482548	1336236	2005
		482386	1335582	2005
		482321	1335315	2005

Dear Ms. Dortch:

Lakeview Charter Academy (“Lakeview”), a Partnerships to Uplift Communities charter school, acting through counsel, pursuant to Sections 54.719-54.721 of the Commission’s rules, hereby files this Consolidated Request for Review and Waiver (“Consolidated Request”), requesting review of the adverse decision of the Administrator of the Universal Service Administrative Company (“USAC”), denying Lakeview’s appeals, a waiver of the 60-day filing deadline for filing this Request and USAC’s continued efforts to incorrectly recover funds from Lakeview for FY 2005 and unjust and unfair recent Red Light action.¹ See Exhibit 1.

On March 31, 2008, USAC’s Schools and Libraries Division (“SLD”) issued a Notification of Improperly Disbursed Funds Letter for each above-listed FCC Form 471. On May 1, 2008, Lakeview filed a joint Appeal with SLD. See Exhibit 2. A copy of that Appeal is attached hereto and Lakeview hereby incorporates its Appeal by reference in support of this consolidated Request, including all of the facts and arguments made therein.

¹ 47 C.F.R. § 54.719-57.721.

Ms. Marlene Dortch
March 13, 2009
Page 2

On October 17, 2008, the SLD denied Lakeview's Appeal ("Denial Letter") stating, in error, that Lakeview did not have an approved Tech Plan when it filed its Form 486. Lakeview submitted a letter with its Appeal from the Los Angeles County Office of Education stating Lakeview did, in fact, have an approved Tech Plan before April 29, 2005, nearly one year before Lakeview filed its Form 486. However, the SLD did not explain why it deemed this letter as insufficient. Despite issuing its Denial Letter, the SLD also accepted and reviewed additional information in support of Lakeview's Appeal that was submitted on November 20, 2008 and November 26, 2008, almost a month after Denial Letter. On December 1, 2008, the SLD responded to Lakeview via e-mail stating "we do not find this information sufficient to approve the appeal" and "strongly suggested" Lakeview file an appeal with the Federal Communications Commission within 60-days of the date of the Denial Letter. At a minimum, the SLD should have explained why it rejected Lakeview's additional information and provided a basis for reaching its conclusion.

While the 60-day period for filing an appeal of the Denial Letter remained open, the SLD sent Lakeview the first of two Demand Payment Letters on November 10, 2008 and on December 11, 2008, respectively. The period for filing a timely appeal of the Denial Letter with the Federal Communications Commission ("FCC") ended on December 16, 2008, five days after the second Demand Payment Letter was sent to Lakeview. The SLD should have delayed sending the first Demand Payment Letter until the time for filing an appeal of the Denial Letter expired. There are no FCC rules that set forth the procedures for when Demand Payment Letters should be issued by USAC. The lack of clear guidance and procedures creates confusion and uncertainty, as is the case here.

Additional confusion is caused by the fact that the SLD is applying the FCC's Red Light Rules² to Lakeview but the FCC's records indicate Lakeview's status is GREEN. For example, the SLD dismissed one of Lakeview's FY2008 FCC Form 471 applications on January 15, 2009 because of an unpaid debt to USAC or the FCC even though the FCC's records reflect Lakeview's Red Light status is GREEN. *See Exhibit 3.*

Lakeview recently retained counsel to provide assistance with this matter. In order to preserve Lakeview's appeal rights, this Consolidated Request is being submitted, which will be supplemented at a later date to include additional facts and legal arguments. *See 47 C.F.R. § 54.720(a).* A waiver is necessary because this Consolidated Request is being filed outside of the 60-day appeal filing window due to significant internal confusion at Lakeview and other reasons.

² 47 C.F.R. § 1.1910(b)(2).

Ms. Marlene Dortch
March 13, 2009
Page 3

Lakeview respectfully requests that the Commission grant this Consolidated Request and direct the SLD to reverse the Notice of Improperly Disbursed Funds Letter dated March 31, 2008 for Funding Year 2005, cease all collection efforts of those appropriately remitted funds, reinstate the recent Notice of Dismissal for FY 2008,³ and discontinue application of the FCC's Red Light Rules against all pending and future E-rate applications while this Consolidated Request is pending.

Sincerely,



Cynthia B. Schultz
Counsel to Lakeview Charter Academy,
a Partnerships to Uplift Communities Charter School

³ Lakeview FY 2008 Request for Review filed contemporaneously herewith in Docket No. 02-6.

Exhibit 1



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

October 17, 2008

Jaime Serrano
PUC Schools
111 North First Street
Suite 100
Burbank, CA 91502

Re: Applicant Name: LAKEVIEW CHARTER ACADEMY
Billed Entity Number: 16021236
Form 471 Application Number: 482321
Funding Request Number(s): 1335315
Your Correspondence Received: May 01, 2008

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Notification of Improperly Disbursed Funds Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1335315
Decision on Appeal: **Denied**
Explanation:

- During the Appeal Review USAC determined that the applicant requested funding for Internal Connections during the original request for funding. The Item 21 is a quote for cabling, which is not basic telecom service; therefore, a technology plan was required. During a site visit, the applicant was requested to provide proof that their technology plan had been approved by a certified Technology Plan Approver for Funding Year 2005. In response, the applicant provided a tech plan approval letter that the applicant indicated was for funding year 2005, but the approval is dated June 9, 2006, which is after Form 486 #337116 was submitted on April 6, 2006 and after the requested Service Start Date (SSD) of July 4, 2005. On appeal, the applicant provided a letter dated March 25, 2008 from certified technology plan approver Los Angeles County Office of Education (LACOE)

stating that the technology plan was approved prior to April 29, 2005. During Appeal review, the applicant and LACOE were given the opportunity to provide the date of the LACOE approval and a copy of the technology plan approval letter if an approval letter had been issued. In response, LACOE provided approval timelines in October 2006 and then April 2006, but the applicant and LACOE failed to provide the dated technology plan approval letter. Additionally, LACOE was asked to explain the discrepancy between the original response that the plan was approved prior to April 29, 2005 and LACOE's subsequent responses, but failed to do so. A technology plan must be written at the time the Form 470 was filed and must be approved before the start of service or the filing of the Form 486, whichever is earlier. To locate a certified technology plan approver see <http://www.usac.org/sl/tools/search-tools/tech-plan-approver-locator.aspx>. You have failed to demonstrate that your technology plan had been approved by a certified Technology Plan Approver before the start of service.

You certified on your FCC Form 486 that the technology plan for the services received as indicated on the form was approved. During the review of your application, however, USAC determined that the technology plan you provided was not approved before receiving services as required by program rules. In your appeal, you did not show that USAC's decision was incorrect. Consequently, your appeal is denied.

FCC rules require applicants to certify on their FCC Form 470 and FCC Form 471 that the entities receiving products and/or services other than basic telephone service are covered by an individual and/or higher-level technology plan that has been, or is in the process of being approved. See 47 C.F.R. sec. 54.504(b)(2)(iii) and (iv); 47 C.F.R. sec. 54.504(c)(1)(iv) and (v). The applicants are required to obtain approvals of their technology plans from their state, the Administrator, or an independent entity approved by the Commission and certified by USAC as qualified to provide such approval. On their FCC Form 486, applicants confirm that their plan was approved before they began receiving services. Pursuant to the FCC's Fifth Report and Order (FCC 04-190, released August 13, 2004), FCC rules require technology plans to include five mandatory content elements relating to the applicant's educational development strategies. See 47 C.F.R. sec. 54.508 for technology plan requirements.

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

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

Schools and Libraries Division
Universal Service Administrative Company

cc: Rodrigo E. Donoso



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

October 17, 2008

Jaime Serano
PUC Schools
111 North First Street
Suite 100
Burbank, CA 91502

Re: Applicant Name: LAKEVIEW CHARTER ACADEMY
Billed Entity Number: 16021236
Form 471 Application Number: 482548
Funding Request Number(s): 1336236
Your Correspondence Received: May 01, 2008

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Notification of Improperly Disbursed Funds Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1336236
Decision on Appeal: **Denied**
Explanation:

- During the Appeal Review USAC determined that the applicant requested funding for Internal Connections during the original request for funding. The Item 21 is a quote for switches and additional internal connections, which is not basic telecom service; therefore, a technology plan was required. During a site visit, the applicant was requested to provide proof that their technology plan had been approved by a certified Technology Plan Approver for Funding Year 2005. In response, the applicant provided a tech plan approval letter that the applicant indicated was for funding year 2005, but the approval is dated June 9, 2006, which is after Form 486 #337116 was submitted on April 6, 2006 and after the requested Service Start Date (SSD) of July 4, 2005. On appeal, the applicant provided a letter dated March 25, 2008 from certified technology plan approver

Los Angeles County Office of Education (LACOE) stating that the technology plan was approved prior to April 29, 2005. During Appeal review, the applicant and LACOE were given the opportunity to provide the date of the LACOE approval and a copy of the technology plan approval letter if an approval letter had been issued. In response, LACOE provided approval timelines in October 2006 and then April 2006, but the applicant and LACOE failed to provide the dated technology plan approval letter. Additionally, LACOE was asked to explain the discrepancy between the original response that the plan was approved prior to April 29, 2005 and LACOE's subsequent responses, but failed to do so. A technology plan must be written at the time the Form 470 was filed and must be approved before the start of service or the filing of the Form 486, whichever is earlier. To locate a certified technology plan approver see <http://www.usac.org/sl/tools/search-tools/tech-plan-approver-locator.aspx>. You have failed to demonstrate that your technology plan had been approved by a certified Technology Plan Approver before the start of service.

You certified on your FCC Form 486 that the technology plan for the services received as indicated on the form was approved. During the review of your application, however, USAC determined that the technology plan you provided was not approved before receiving services as required by program rules. In your appeal, you did not show that USAC's decision was incorrect. Consequently, your appeal is denied.

FCC rules require applicants to certify on their FCC Form 470 and FCC Form 471 that the entities receiving products and/or services other than basic telephone service are covered by an individual and/or higher-level technology plan that has been, or is in the process of being approved. See 47 C.F.R. sec. 54.504(b)(2)(iii) and (iv); 47 C.F.R. sec. 54.504(c)(1)(iv) and (v). The applicants are required to obtain approvals of their technology plans from their state, the Administrator, or an independent entity approved by the Commission and certified by USAC as qualified to provide such approval. On their FCC Form 486, applicants confirm that their plan was approved before they began receiving services. Pursuant to the FCC's Fifth Report and Order (FCC 04-190, released August 13, 2004), FCC rules require technology plans to include five mandatory content elements relating to the applicant's educational development strategies. See 47 C.F.R. sec. 54.508 for technology plan requirements.

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

the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division
Universal Service Administrative Company

cc: Rodrigo E. Donoso



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

October 17, 2008

Jaime Serrano
PUC Schools
111 North First Street
Suite 100
Burbank, CA 91502

Re: Applicant Name: LAKEVIEW CHARTER ACADEMY
Billed Entity Number: 16021236
Form 471 Application Number: 482321
Funding Request Number(s): 1335315
Your Correspondence Received: May 01, 2008

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Notification of Improperly Disbursed Funds Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1335315
Decision on Appeal: **Denied**
Explanation:

- During the Appeal Review USAC determined that the applicant requested funding for Internal Connections during the original request for funding. The Item 21 is a quote for cabling, which is not basic telecom service; therefore, a technology plan was required. During a site visit, the applicant was requested to provide proof that their technology plan had been approved by a certified Technology Plan Approver for Funding Year 2005. In response, the applicant provided a tech plan approval letter that the applicant indicated was for funding year 2005, but the approval is dated June 9, 2006, which is after Form 486 #337116 was submitted on April 6, 2006 and after the requested Service Start Date (SSD) of July 4, 2005. On appeal, the applicant provided a letter dated March 25, 2008 from certified technology plan approver Los Angeles County Office of Education (LACOE)

stating that the technology plan was approved prior to April 29, 2005. During Appeal review, the applicant and LACOE were given the opportunity to provide the date of the LACOE approval and a copy of the technology plan approval letter if an approval letter had been issued. In response, LACOE provided approval timelines in October 2006 and then April 2006, but the applicant and LACOE failed to provide the dated technology plan approval letter. Additionally, LACOE was asked to explain the discrepancy between the original response that the plan was approved prior to April 29, 2005 and LACOE's subsequent responses, but failed to do so. A technology plan must be written at the time the Form 470 was filed and must be approved before the start of service or the filing of the Form 486, whichever is earlier. To locate a certified technology plan approver see <http://www.usac.org/sl/tools/search-tools/tech-plan-approver-locator.aspx>. You have failed to demonstrate that your technology plan had been approved by a certified Technology Plan Approver before the start of service.

You certified on your FCC Form 486 that the technology plan for the services received as indicated on the form was approved. During the review of your application, however, USAC determined that the technology plan you provided was not approved before receiving services as required by program rules. In your appeal, you did not show that USAC's decision was incorrect. Consequently, your appeal is denied.

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

Schools and Libraries Division
Universal Service Administrative Company

cc: Rodrigo E. Donoso

Exhibit 2



JACQUELINE ELLIOT
DR. REF RODRIGUEZ
Co-Chief Executive Officers

Letter of Appeal for Notification of Improperly Disbursed Funds

Jaime Serrano
111 N. First ST.
Suite 100
Burbank, CA 91502
(818) 333-4585
(818) 333-4587 – FAX
j.serrano@pucschools.org

RE: Notification date of improperly disbursed funds letter: March 31, 2008
Funding Year: 2005
Applicant Name: Lakeview Charter Academy
Form 471 Application Number: 482548, 482386, and 482321
Billed Entity Number: 16021236
FCC Registration Number: 0011865573

During the course of a review it was determined that the technology plan for Lakeview Charter Academy was not approved at the time of submission of the form 486. We would like to appeal this decision based on the grounds that we did have approval from our state Technology Plan approver. I am enclosing a letter I requested from Los Angeles County of Education as proof that we had an approved Technology Plan at the time of submission of the form 486.



Jaime Serrano

PARTNERSHIPS TO UPLIFT COMMUNITIES



Los Angeles County Office of Education

Leading Educators • Supporting Students • Serving Communities

Darina P. Robles, Ph.D.
Superintendent

Los Angeles County
Board of Education

Thomas A. Seenz
President

Sophia Waugh
Vice President

Marta A. Casillas

Rudolf S. Freer

Leslie K. Gilbert-Lurie

Angie Papadakis

Rebecca J. Turrentine

March 25, 2008

Mr. Jaime Serrano
Lakeview Charter Academy
1445 Celis Street
San Fernando, CA

Dear Mr. Serrano ;

This letter is to confirm that the Los Angeles County Office of Education can verify that your technology use plan for EETT Formula Funding was submitted for state review on April 29, 2005. Prior to that it had been approved for E-rate purposes for the years 7/1/2005 through 6/30/2009 at the County level by me as the initial part of the State Approval Process.

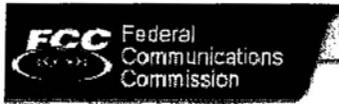
Approval meant that your district was eligible to participate in E-Rate, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) program that provides affordable access to telecommunications services for all eligible schools and libraries in the United States.

Should you need further assistance, please call (562-922-6244)

Sincerely,

Mary Lou Harbison
Los Angeles County Office of Education

Exhibit 3



Red Light Display System

[FCC](#) > [Fees](#) > Red Light Display System

Logged in as: Lakeview Charter Academy (0011865573) [[Log Out](#)]

[Print](#) | [Help](#)

3/11/2009 11:55 AM

Current Status of FRN 0011865573

STATUS: Green

You have no delinquent bills which would restrict you from doing business with the FCC.

The Red Light Display System checks all FRNs associated with the same Taxpayer Identification Number (TIN). A green light means that there are no outstanding delinquent non-tax debts owed to the Commission by any FRN associated with the requestor's TIN.

The Red Light Display System was last updated on 03/11/2009 at 8:55 AM; it is updated twice each business day at about 9 a.m. and 7 p.m., ET.

Customer Service

[Red Light Help](#)

[FCC Debt Collection](#)

[FCC Fees](#)

[Web Policies / Privacy Policy](#)

Red Light Display System Help Line: (877) 480-3201, option 4, 4; TTY (202) 414-1255 (Mon.-Fri. 8 a.m.-6:00 p.m. ET)

Red Light Display System has a dedicated staff of customer service representatives standing by to answer your questions or concerns. You can email us at arinquiries@fcc.gov or fax us at (202) 418-7869.



**The FCC Acknowledges Receipt of Comments From ...
Lakeview Charter Academy
... and Thank You for Your Comments**

Your Confirmation Number is: '2009313477980 '	
Date Received:	Mar 13 2009
Docket:	02-6
Number of Files Transmitted: 1	

DISCLOSURE

This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing. Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the Help Desk at 202-418-0193.

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updated 12/11/03

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 30th day of June, 2009, a copy of the foregoing Supplement to Consolidated Request for Review and Waiver has been served via electronic mail or first class mail, postage pre-paid, to the following:

Scott M. Deutchman
Legal Advisor to Acting Chairman Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Scott.Duetchman@fcc.gov

Julie A. Veach
Acting Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Julie.Veach@fcc.gov

Randy Clarke
Legal Counsel to the Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
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Randy.Clarke@fcc.gov

Jennifer McKee
Acting Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
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Jennifer.McKee@fcc.gov

Gina Spade
Assistant Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Gina.Spade@fcc.gov

Letter of Appeal
Schools and Libraries Division-
Correspondence Unit
100 S. Jefferson Road
P.O. Box 902
Whippany, NJ 07981



Carly T. Didden