

## **Request For Review Request For Waiver**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: Name: **New Covenant Christian School**  
BEN: **10714**  
Funding Year: **2006**  
Application: **523146, 523340**  
USAC FCDL: **08/29/2006**  
USAC ADAL: **07/14/2009**

September 10, 2009

Dear Sirs.

This is a letter for a request of a Review of the referenced FCDL and a request of a Waiver regarding the above captioned USAC Notification regarding the following FRN's:

FRN#: **1440338 – Decision on Appeal: Denied.** “The record shows that New Covenant Christian School was approved for E-rate discounts on services other than “POT” wireless and wireline telephone services for which a technology plan Approval Letter (TPAL) indicates that the School technology plan was approved on January 11, 2007. The rules of this support mechanism dictate that the technology plan on which services are based have to be approved before the state of service. Since New Covenant School did not comply with this program requirement, the appeal is denied.”

**Funds to be recovered from Applicant: \$20, 856**

FRN#: **1440765,1440782 - Decision on Appeal: Denied** “The record shows that New Covenant Christian School was approved for E-rate discounts on services other than “POT” wireless and wireline telephone services for which a technology plan Approval Letter (TPAL) indicates that the School technology plan was approved on January 11, 2007. The rules of this support mechanism dictate that the technology plan on which services are based have to be approved before the state of service. Since New Covenant School did not comply with this program requirement, the appeal is denied.”

**Funds to be recovered from Applicant: \$13,776.66, \$9,184.44,**

FRN#: **1440811 Decision on Appeal: Denied** “The record shows that New Covenant Christian School was approved for E-rate discounts on services other than “POT” wireless and wireline telephone services for which a technology plan Approval Letter (TPAL) indicates that the School technology plan was approved on January 11, 2007. On February 20, 2009 the School informed USAC via e-mail that Cisco Router model 2801 w/VWIC-2MFT-T1 was installed on October 11, 2006. The rules of this support mechanism dictate that the technology plan must be approved before any equipment is installed. Since New Covenant Christian School did not comply with this program requirement, the appeal is denied.

**Funds to be recovered from Applicant: \$4,050**

The school submits that it had a written technology plan when form 470, 471 & form 486 was submitted to USAC. A clerical error was made and the plan without any material change was submitted to E-rate Central for Approval and was approved without any need of modification.

The FCC has already ruled in:

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Bishop Perry Middle School	)	File Nos. SLD-487170, <i>et al.</i>
New Orleans, LA, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

The rest of the petitioners assert a waiver is appropriate for one of two reasons: either someone on the applicants’ staff made a mistake or had a family emergency that prevented them from filing on time or the delay in the filing or receipt of the application was due to circumstances out of the applicants’ control. Specifically, in the first group, some of these appeals involve applicants whose staff members inadvertently failed to file the application forms in a timely manner.<sup>1</sup> Another group

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<sup>1</sup> Request for Waiver of Assabet Valley Regional Vocational School District; Request for Review of Barnwell County School District 45; Request for Review of Bath County School District; Request Waiver of Beavertown Community Library; Request for Review of Brown County School Corporation; Request for Review of Caruthers Unified School District; Request for Review of Central Catholic High School; Application for Review of Chawanakee Joint Elementary School District; Request for Review of Clearwater Memorial Library; Request for Waiver of Clinton County Board of Education; Request for Review of Coahoma County Public Schools; Requests for Review of Consorcio de Escuelas y Bibliotecas; Request for Review and Waiver of CPC Behavioral Healthcare; Request for Review of Delta County School District; Request for Review of Fairfax School District R3; Request for Review of Germantown School District; Request for Waiver of Hawaii State Public Library; Petitioner for Reconsideration of High Bridge Board of Education; Request for Waiver of Holmes District School Board; Request for Review of Hubbard Independent School District; Request for Waiver of Indian Oasis Baboquivari District 40; Request for Waiver of Island Trees Public Library; Request for Waiver

of petitioners state that they were unable to comply with the filing deadline due to staff illness or relatives of staff members who were ill.<sup>2</sup> Other petitioners claim that the rules and instructions for filing an FCC

1. Form 471 are vague and unclear and that the resulting misunderstandings led to forms being filed after the filing window.<sup>3</sup>

And in:

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
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Requests for Review and Waiver )  
of the Decision of the )  
Universal Service Administrator by )  
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of Jefferson School District; Request for Review of Los Alamitos Unified School District; Request for Review of Madera Unified School District; Request for Review of Malone Independent School District; Request for Waiver of McClure Community Library; Request for Waiver of Middleburg Community Library; Request for Waiver of Minnesota Transition School; Request for Waiver of Minnewaska Area Schools; Request for Review of Montfort & Allie B. Jones Memorial Library; Request for Waiver of Mount Ayr Community School District; Request for Waiver of Mount Saint John School; Request for Waiver of Mt. Carroll Township Public Library; Request for Review of Our Lady of Refuge; Request for Waiver of Pinon Dormitory; Request for Waiver of Queen of Apostles Catholic School; Request for Waiver of Richmond Public Library; Request for Review of Rylander Memorial School; Request for Waiver of Selinsgrove Community Library; Petitioner for Reconsideration of Siskiyou County Library; Request for Review of Southeast Delco School District; Request for Review of Southeastern Libraries Cooperating; Request for Review of St. Clement's Regional Catholic School; Request for Review of St. Elizabeth Interparochial School; Request for Waiver of St. Francis of Assisi School; Request for Waiver of SuperNet Consortium; Request for Waiver of Tiverton School Department; Request for Waiver Wabash Valley Educational Center; Request for Review of Wallington Public Schools; Request for Waiver of Walnut Community School District; Request for Waiver of Washington Local School District; Request for Waiver of Westside Holistic Family Services; Request for Review of Whitfield County School District; Request for Waiver of Wilkinson County School District; Request for Review of Wilson Memorial Library.

<sup>2</sup> Request for Waiver of Augusta County Library; Request for Review of Bonnie Brae Educational Center School; Request for Review of Garvey School District; Request for Waiver of Gaston County School District; Request for Waiver Millennium Community School; Request for Waiver of Northwest Institute for Contemporary Learning, Inc.; Request for Waiver of St. Mary's School; Petition for Reconsideration of Neches Independent School District; Request for Waiver of Unadilla Community School.

<sup>3</sup> Request for Waiver of Blackwell Public Schools; Request for Waiver of Brooklyn Jesuit Prep; Request for Review of Cecil County Public Schools; Request for Review of Colleton County School District; Request for Review of Jefferson City School District; Request for Review of Laporte School District 306; Request for Waiver of Nativity Mission School; Request for Review of Pierce City School District R6; Request for Waiver of St. Ignatius Academy.

Alaska Gateway School District	)	File Nos. SLD-412028, <i>et al.</i>
Tok, AK, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: September 14, 2006**

**Released: September 14, 2006**

2. Based on the facts and the circumstances of these specific cases, we find that good cause exists to waive the deadline for filing the FCC Form 486 for Petitioners.<sup>4</sup> Under Bureau precedent deadlines have been strictly enforced for the E-rate program, including those pertaining to the FCC Form 486.<sup>5</sup> As we recently noted in *Bishop Perry Middle School*, a departure from required filing deadlines may be warranted upon careful

2.review of the Petitioner’s case and when doing so will serve the public interest.<sup>6</sup> Generally, these applicants claim that staff mistakes or confusion, or circumstances beyond their control resulted in missing the FCC Form 486 deadline.<sup>7</sup> We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to staff dedicated to pursuing federal grants, especially in small school districts. Even when a school official becomes adept at the application process, unforeseen events or emergencies may delay filings in the event there is no other person proficient enough to complete the forms.<sup>8</sup> Furthermore, some of the errors were caused by third parties or unforeseen events and therefore were not the fault of the applicants. **Given that the applicants missed a USAC procedural deadline** and did not violate a Commission rule, 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.

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<sup>4</sup>Because we waive the FCC Form 486 deadline, applicants should receive funding from their actual service start date. We also direct USAC to waive any of its subsequent deadlines if related to the late-filed FCC Form 486, such as the FCC Form 472 deadline, if necessary for the processing of Petitioners’ applications.

<sup>5</sup>*See Requests for Waiver by Lucia Mar Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-249712, *et al.*, CC Docket No. 02-6, Order, 19 FCC Rcd. 20364, para. 3 (Wireline Competition Bur. Rel. May 28, 2004); *Request for Review by East Carroll Parish School Board, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591, 24594, para. 7 (Wireline Comp. Bur. 2002).

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

<sup>7</sup>Some Petitioners claim that they postmarked the FCC Form 486 on time. Given that we are waiving USAC’s deadline for these applicants who mistakenly or knowingly filed late, we give these Petitioners the benefit of the doubt and, to the extent necessary, waive the FCC Form 486 filing deadline for them as well.

<sup>8</sup>For example, Western Christian High School’s sole Universal Service Fund official suffered a debilitating stroke and was unable to meet the Form 486 deadline. Request for Review by Western Christian High School at 1.

Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants. In these cases, the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.<sup>9</sup> We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

**Federal Communications Commission FCC 07-37**

And

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )

)

Requests for Review or Waiver of Decisions of )

the Universal Service Administrator by )

)

Brownsville Independent School District ) File Nos. SLD-482620, *et al.*

Brownsville, TX, *et al.* )

)

Schools and Libraries Universal Service ) CC Docket No. 02-6

Support Mechanism )

**ORDER**

**Adopted: March 22, 2007 Released: March 28, 2007**

By the Commission: Commissioner McDowell issuing a statement.

**I. INTRODUCTION**

1. In this Order, we grant appeals by 32 schools and libraries (collectively, Petitioners) of decisions by the Universal Service Administrative Company (USAC) that reduced or denied them funding from the schools and libraries universal service support mechanism (also known as the E-rate program).<sup>1</sup> Specifically, we waive, in part, our technology plan rules and remand the underlying applications to USAC for further consideration consistent with this Order. To ensure that the remanded applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendix, and issue an award or a denial based on a complete review and analysis, no later than 90 calendar days from release of this Order. In addition, beginning with applications for Funding Year 2007, we direct USAC to enhance its outreach efforts as described herein to better inform applicants of the technology plan requirements and to provide applicants with a 15-day opportunity to provide correct technology plan documentation.<sup>2</sup>

<sup>1</sup>Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). In this Order, we use the term "appeals" to refer generically to the requests for review or waiver listed in the Appendix.

USAC determined that Petitioners' funding requests were not supported by an approved technology plan. In three instances, USAC granted the Petitioner's funding request but then cancelled the Petitioner's FCC Form 486 because USAC later determined that the funding requests were not supported by an approved technology plan. Therefore, unlike the other Petitioners, these Petitioners request review of USAC's decision to cancel their FCC Forms 486. *See generally* Request for Review of SEED Public Charter School; Request for Review of St. Mary's Public Library; Request for Review of The Pennsylvania School for the Deaf. In addition, one Petitioner, Kimball Public Library, whose funding request has not yet been denied, requests a waiver of the requirement that it file a technology plan. *See generally* Request for Waiver of Kimball Public Library.

<sup>2</sup>USAC shall apply this directive to all pending applications and appeals as well. **Federal Communications Commission FCC 07-37**

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<sup>9</sup>*See* 47 U.S.C. § 254(h).

2. As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated,<sup>3</sup> resulting in their applications for E-rate support being denied because of simple mistakes. We find that the actions we take here will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries obtain access to discounted telecommunications and information services.<sup>4</sup>

3. In particular, to prevent some of the recurring mistakes related to the technology plan requirements while we consider additional steps to improve the E-rate program,<sup>5</sup> we direct USAC to enhance its outreach efforts as described herein. Requiring USAC to take these additional steps will not reduce or eliminate any application review procedures or program requirements that applicants must comply with to receive funding. Indeed, we remain committed to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and takes steps to educate applicants in a manner that fosters lawful program participation. We also emphasize that the actions taken in this Order should have minimal effect on the overall federal universal service fund (USF or Fund), because the monies needed to fund these appeals have already been collected and held in reserve.<sup>6</sup>

<sup>3</sup> *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*). See also *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*; *Federal-State Joint Board on Universal Service*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*); *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, et al.*; *Federal-State Joint Board on Universal Service*, File Nos. SLD-418938, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5348 (2006).

<sup>4</sup> 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

<sup>5</sup> *Comprehensive Review NPRM*, 20 FCC Rcd at 11324-25, paras. 37-40 (seeking comment on the application process and competitive bidding requirements for the schools and libraries program).

<sup>6</sup> See *infra* n.34.

<sup>7</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>8</sup> *Id.* §§ 54.504(b)(2)(iii)-(iv), 54.508; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9077, para. 572 (1997) (*Universal Service Order*) (subsequent history omitted).

<sup>9</sup> 47 C.F.R. § 54.504(b)(2)(iv); Universal Service Administrative Company, Eligible Services List, [http://www.universalservice.org/\\_res/documents/sl/pdf/els\\_archive/2006-eligible-services-list.pdf](http://www.universalservice.org/_res/documents/sl/pdf/els_archive/2006-eligible-services-list.pdf) (dated Nov. 18, 2005) (*2006 Eligible Services List*) (“If submitting [an] application ONLY for single line voice services (Local, Cellular/PCS, and/or long distance telephone service), applicants are not required to develop a Technology Plan. Applicants applying for other products or services, including PBX, key system, Centrex system, or similar technology are required to develop a Technology Plan.”); see also *Request for Review of the Decision of the*

## II. BACKGROUND

4. The E-rate program permits eligible schools, libraries, and consortia that include eligible schools and libraries to apply for funding in the form of discounts on eligible telecommunications services, Internet access, and internal connections.<sup>7</sup> The Commission requires participating schools and libraries to base their requests for discounts on an approved technology plan,<sup>8</sup> unless they are seeking discounts on “basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.”<sup>9</sup>

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*Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 18812, 18816, para. 11 (Com. Carr. Bur. 2001).

<sup>10</sup> 47 C.F.R. § 54.504(b)(2)(iii).

<sup>11</sup> *Id.* § 54.508(d); *Universal Service Order*, 12 FCC at 9078, para. 574. *See also* Universal Service Administrative Company, Technology Plans, <http://www.universalservice.org/sl/applicants/step02/> (last modified Nov. 1, 2006).

<sup>12</sup> 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), 54.508(c); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15826-30, para. 56 (2004) (*Fifth Report and Order*). Applicants whose technology plans have not been approved when they file FCC Form 471 must once again certify that they understand their technology plans must be approved prior to the commencement of service. 47 C.F.R. §§ 54.504(c)(1)(iv)-(v).

<sup>13</sup> 47 C.F.R. § 54.508(c).

<sup>14</sup> *See supra* n.1.

<sup>15</sup> *See* 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v), 54.508(c)-(d). The Commission may waive any provision of its rules on its own motion for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). 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. *Northeast Cellular*, 897 F.2d at 1166.

Specifically, to ensure that applicants make appropriate decisions regarding the services for which they seek discounts, applicants must develop a technology plan prior to requesting bids on services through the filing of an FCC Form 470.<sup>10</sup> In addition, to ensure that the plans are based on the reasonable needs and resources of the applicants and are consistent with the goals of the program, the technology plans must be independently approved by a state agency or other specified entity.<sup>11</sup> Applicants whose technology plans have not been approved when they file FCC Form 470 must certify that they understand their technology plans must be approved prior to the commencement of service.<sup>12</sup> They also must confirm, in FCC Form 486, that their plan was approved before they began receiving services.<sup>13</sup>

5. Petitioners request review of USAC's decisions to reduce or deny them funding because their applications were not supported by an approved technology plan, as required by the Commission's rules.<sup>14</sup>

### III. DISCUSSION

6. In this item, we grant Petitioners' requests for review and we waive, in part, the Commission's technology plan rules.<sup>15</sup> We therefore remand the underlying applications to USAC for further consideration consistent with this Order. In remanding Petitioners' underlying applications to USAC, we make no finding as to the sufficiency of any technology plan documentation and we make no finding as to the ultimate eligibility of the requested services.

7. Petitioners' requests for funding from the E-rate program were denied because USAC determined that the funding requests were not supported by an approved technology plan. In some cases, Petitioners did not develop a technology plan because they sought discounts only for telecommunications

<sup>16</sup> See generally Request for Review of Dickens Public Library. Dickens Public Library requested discounts only on telecommunications services but mistakenly attached documentation from a different funding request suggesting that it might be seeking discounts on Internet access services as well. *Id.*

<sup>17</sup> See generally Request for Review of Pierson Library; Request for Review of Marathon County Public Library; Request for Review of Coldwater Library; Request for Waiver of Kimball Public Library; Request for Review of The Pennsylvania School for the Deaf. We note that, until October 2003, the Eligible Services List did not specify that voice services provided via PBX or similar technology required a technology plan. See Universal Service Administrative Company, Eligible Services List – Archived Versions, <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx> (last modified Apr. 12, 2006). Moreover, the Eligible Services List has not, and does not, specifically state that applicants who receive voice service via ISDN/PRI or CentraNet are required to develop a technology plan, which may be confusing to some applicants. *Id.*; see also 2006 Eligible Services List. Elbert County School District argues, in part, that it should not be required to submit a technology plan for Centrex services because Centrex was the most cost-effective way to obtain service. See generally Request for Review of Elbert County School District. Although applicants applying for Centrex service are required to develop a technology plan that reflects the service, we find that there is good cause to waive that requirement here. There is no evidence in the record that Elbert County School District intended to circumvent the technology plan requirements when it purchased Centrex service as a cost-saving measure.

<sup>18</sup> See generally Request for Review of School Administrative District 29; Request for Review of InterTechnologies Group; Request for Review of South Boardman Elementary School; Request for Review of Mark Twain Union Elementary School District; Request for Review of Norfolk Country Agricultural High School; Request for Review of Hancock County Public Library; Request for Review of Socorro Consolidated School District; Request for Review of Cleveland Country Memorial Library; Request for Review of Charlottesville City Schools; Request for Review of Wisconsin Rapids Area School District; Request for Review of SEED Public Charter School; Request for Review of Milford E. Barnes Jr. School; Request for Review of Dedham Public Schools; Request for Review of Jacksboro Independent School District; Request for Review of Maternity B.V.M. School; Request for Review of Elbert County School District; Request for Review of Our Lady of Grace School; Request for Review of Brownsville Independent School District; Request for Review of St. Malachy School; Request for Review of St. Mary Star of the Sea School; Request for Review of St. Paul – Our Lady of Vilna School; Request for Review of Urban Day School; Request for Review of Granite School District; Request for Review of Marion County School District Seven; Request for Review of St. Mary’s Public Library; Request for Review of The Pennsylvania School of the Deaf; Request for Review of Huntingdon Special School District.

<sup>19</sup> See Request for Review of Dedham Public Schools at 3.

<sup>20</sup> See Request for Review of St. Mary’s Public Library at 2; Request for Review of Huntingdon Special School District at 2.

<sup>21</sup> See Request for Review of The Pennsylvania School of the Deaf at 1. Although The Pennsylvania School for the Deaf should have used an SLD-certified technology plan approver to approve its technology plan instead of relying on approval by the school’s board, we find good cause to waive the requirement here. The Pennsylvania School of the Deaf misunderstood which entity should approve its technology plan given that it is neither a public school nor a private school but rather a school established by the Pennsylvania Constitution and chartered by the Commonwealth. See Letter from Philip A. Shalanca and Franklin D. Franus, The Pennsylvania School of the Deaf, to Schools and Libraries Division, USAC (dated Nov. 6, 2006). There is no evidence in the record that The Pennsylvania School of the Deaf intended to circumvent the technology plan approval requirements.

<sup>22</sup> See, e.g., Request for Review of Hancock County Public Library.

services,<sup>16</sup> or because they believed that a technology plan was not required for basic voice service provided over an ISDN/PRI line, a PBX system, or other similar technology.<sup>17</sup> In other instances, Petitioners failed to show, in response to initial inquiries by USAC staff, that they had an approved technology plan in place for the relevant funding year, or that the plan was in the process of being approved.<sup>18</sup> For example, some Petitioners had an approved technology plan in place for the relevant funding year, but provided an approval letter instead of the underlying plan,<sup>19</sup> provided incorrect information about the date on which the technology plan was created,<sup>20</sup> had the wrong entity approve the technology plan,<sup>21</sup> or were unaware that the technology plan already existed.<sup>22</sup> Other Petitioners based

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<sup>23</sup> See, e.g., Request for Review of Cleveland County Memorial Library.

<sup>24</sup> See *supra* n.18. With respect to Socorro Consolidated School District, we note that the version of the approved technology plan that is included in the record covers only the first six months of the relevant funding year. See *generally* Request for Review of Socorro Consolidated School District. However, we find that the District's request was based on a previously approved technology plan. We further note that Jacksboro Independent School District now argues that it was not required to complete a technology plan for local and long distance voice services provided over a T-1 line. See *generally* Request for Review of Jacksboro Independent School District. Because local and long distance voice services provided over a T-1 line are not basic services, a technology plan is required. See *supra* n.9. Nonetheless, we grant the District's Request for Review and waive our technology plan rules because we find that its request was based on a previously approved technology plan and that it had an approved technology plan in place prior to the commencement of service. See *generally* Request for Review of Jacksboro Independent School District. Finally, we note that Marion County School District Seven now argues that a technology plan was not required. See *generally* Request for Review of Marion County School District Seven. Based on the record evidence, it appears that the District was, in fact, required to develop a technology plan. However, it also appears that Marion County School District Seven had a technology plan in place for part of the funding year and updated that plan and obtained approval consistent with state timeframes and procedures. See Letter of Appeal from Everette M. Dean, Jr. Ed.D., Superintendent, Marion County School District Seven, to Schools and Libraries Division, USAC (dated Apr. 20, 2006).

<sup>25</sup> See *supra* para. 7.

<sup>26</sup> *Bishop Perry Order*, 21 FCC Rcd at 5321, para. 11.

<sup>27</sup> See *supra* para. 7.

<sup>28</sup> *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

<sup>29</sup> See *supra* para. 7.

<sup>30</sup> See 47 U.S.C. § 254(h).

their applications on approved technology plans from prior years while they updated those plans and obtained approval consistent with state timeframes and procedures.<sup>23</sup> Subsequently, these Petitioners confirmed that they had an approved technology plan in place for the relevant funding year 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.<sup>24</sup>

8. Based on the facts and the circumstances of these funding applications, we conclude that there is good cause to waive the applicable technology plan rules and to grant Petitioners' requests for review. As noted above, several Petitioners committed clerical or ministerial errors, such as providing the wrong technology plan documentation.<sup>25</sup> As we noted in the *Bishop Perry Order*, 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.<sup>26</sup> Additional Petitioners missed deadlines for developing or obtaining approval of their technology plans.<sup>27</sup> 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.<sup>28</sup>

9. Still other Petitioners did not understand which telecommunications services are considered non-basic and therefore require a technology plan.<sup>29</sup> We find that these Petitioners have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest by denying their funding requests under those circumstances.<sup>30</sup>

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<sup>31</sup> *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

<sup>32</sup> Dickens Public Library, for instance, states that it is a one-staff library open less than 20 hours a week in a town with a population of 202. Request for Review of Dickens Public Library at 1. Similarly, Socorro Consolidated Schools notes that it is located in the second poorest county in the second poorest state in the country. Request for Review of Socorro Consolidated Schools at 2.

<sup>33</sup> 47 U.S.C. § 254(b).

<sup>34</sup> We estimate that these requests for review involve applications for approximately \$2,703,000 in funding for Funding Years 2001-2006. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007 (Jan. 31, 2007). Thus, we determine that the action we take today should have minimal effect on the Universal Service Fund as a whole.

<sup>35</sup> With respect to SEED Public Charter School, we note that USAC cancelled funding because SEED Public Charter School did not use an SLD-certified approver and did not provide a Letter of Approval signed by the SLD-certified approver. However, SEED Public Charter School has demonstrated that it provided the signed Letter of Approval to USAC in a timely manner. *See* Request for Review of SEED Public Charter School at Exhibit 7. In addition, SEED Public Charter School has demonstrated that the entity that approved its technology plan, DC Public Charter School Board, has been an SLD-certified technology plan approver for public charter schools including SEED Public Charter School since December 12, 2000. *Id.* at Exhibit 5.

<sup>36</sup> Petitioners will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall, however, continue to work beyond the 15 days with Petitioners attempting in good faith to provide such additional information.

As the Commission previously noted, many E-rate applications are prepared by school administrators, technology coordinators, teachers and librarians—workers whose primary role in the school or library may be unrelated to applying for federal universal service funds, especially in small school districts or libraries.<sup>31</sup>

10. We also find that denying Petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from potentially receiving funding that they truly need to bring advanced telecommunications and information services their students and patrons.<sup>32</sup> By contrast, waiving the applicable technology plan rules for these Petitioners and granting these requests will serve the public interest by preserving and advancing universal service.<sup>33</sup> Although the technology plan requirements are necessary to guard against the waste of program funds, there is no evidence in the record that Petitioners engaged in activity to defraud or abuse the E-rate program. We further note that granting these requests should have minimal effect on the Fund as a whole.<sup>34</sup> Therefore, we remand the appeals to USAC for further consideration consistent with this Order.<sup>35</sup>

11. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order. If, on remand, USAC determines that it needs additional information to process the applications, such as a technology plan or approval letter, USAC shall permit Petitioners to provide the information within 15 calendar days of receiving notice in writing from USAC that additional information is required.<sup>36</sup>

12. *Additional Processing Directives for USAC.* Beginning with applications for Funding Year 2007, if an applicant responds to a request by USAC to provide technology plan documentation and the documentation provided by the applicant is deficient (*e.g.*, is outdated or will expire before the end of the relevant funding year), USAC shall: (1) 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; and (2) permit the applicant to submit correct documentation, if any, within 15 calendar days

<sup>37</sup> Applicants will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall, however, continue to work beyond the 15 days with applicants attempting in good faith to provide documentation.

<sup>38</sup> This includes all FY 2006 applications for which USAC has completed its review.

<sup>39</sup> We note that applicants will retain the ability to appeal decisions denying funding requests on other grounds. *See* 47 C.F.R. § 54.719(c).

<sup>40</sup> *See, e.g.,* Request for Review of Cleveland County Memorial Library.

<sup>41</sup> *Id.*

<sup>42</sup> 47 C.F.R. § 54.504(b)(2)(iii).

<sup>43</sup> *Id.* § 54.508(d). In the *Fifth Report and Order*, the Commission revised its rules to permit applicants to obtain approval of their technology plans prior to receiving service instead of prior to filing their FCC Forms 470. However, the Commission made clear that “applicants still are expected to develop a technology plan prior to requesting bids on services in FCC Form 470; all that we are deferring is the timing of the approval of such plan by the state or other approved certifying body.” *See Fifth Report and Order*, 19 FCC Rcd 15808, 15826-30, para. 56.

from the date of receipt of notice in writing by USAC.<sup>37</sup> USAC shall apply this directive to all pending applications and appeals.<sup>38</sup> The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should provide sufficient time to correct truly unintentional errors.<sup>39</sup> The opportunity for applicants to submit technology plan information that cures minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding. As a result, universal service support will be received by schools and libraries in which it will have the greatest impact for the most students and patrons. Furthermore, the opportunity to provide correct technology plan documentation will improve the efficiency of the E-rate program. If USAC helps 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. Therefore, we believe this additional opportunity to cure inadvertent errors in the technology plan documentation submitted will improve the administration of the Fund and reduce the occurrence of circumstances justifying waivers such as those granted above.

13. To complement this effort, USAC shall develop additional outreach efforts to help applicants gain a better understanding of the technology plan requirements and avoid some of the mistakes presented here. Specifically, USAC shall update the information on its website concerning technology plans to clarify that the technology plan that the applicant must develop by the time it files its FCC Form 470 is the technology plan for the *upcoming* funding year(s). In some cases, when Petitioners filed FCC Form 470, they relied on technology plans from prior funding years that included the same services, but would expire during the application process or funding year.<sup>40</sup> These Petitioners then obtained approval for new plans by the time they received discounted services.<sup>41</sup> Therefore, they incorrectly assumed that they met the requirements in the Commission’s rules that they be “covered by . . . technology plans for using the services requested in the [Form 470]”<sup>42</sup> and that “their plan [be] approved before they began receiving services.”<sup>43</sup> That is, they thought they could use two different plans to satisfy the technology plan requirements whereas the rules require applicants to develop a technology plan in advance of filing their FCC Form 470 and to obtain approval of *that same plan* prior to the commencement of service. We believe such an outreach program will increase awareness of the technology plan requirements and will assist applicants in complying with those requirements. We also believe that these changes will improve the overall efficacy of the E-rate program.

<sup>44</sup> *Comprehensive Review NPRM*, 20 FCC Rcd at 11324-25, paras. 37-40.

<sup>45</sup> See 47 U.S.C. § 254(h).

<sup>46</sup> See 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v), 54.508; *Fifth Report and Order*, 19 FCC Rcd 15808, 15826-30, para. 56.

14. In addition, we note that, in the *Comprehensive Review NPRM*, we started a proceeding to address the concerns raised herein by, among other things, improving the application and disbursement process for the E-rate program.<sup>44</sup> Although we expect that the additional direction we have provided in this Order will help ensure that eligible schools and libraries can more effectively navigate the technology plan requirements, this action does not obviate the need to take steps to reform and improve the program based on the record in the *Comprehensive Review* proceeding.

15. We emphasize the limited nature of this decision. Although we base our decision to grant these requests in part on the fact that many of the rules at issue here are procedural, such a decision is in the context of the purposes of section 254 and cannot necessarily be applied generally to other Commission rules that are procedural in nature. Specifically, section 254 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.”<sup>45</sup> Moreover, this Order does not alter the obligation of participants in the E-rate program to comply with the Commission’s rules on technology plans or our other rules, which are vital to the efficient operation of the E-rate program.<sup>46</sup> We continue to require E-rate applicants to submit complete and accurate information to USAC in a timely fashion as part of the application review process. The direction we provide USAC will not lessen or preclude any application review procedures of USAC. All existing E-rate program rules and requirements will continue to apply, including the existing forms and documentation, USAC’s Program Integrity Assurance review procedures, and other processes designed to ensure applicants meet the applicable program requirements.

16. Finally, we are committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and investigations to determine compliance with E-rate program rules and requirements. Because audits and investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were improperly disbursed or in a manner inconsistent with the statute or the Commission’s rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission’s procedures and in cooperation with law enforcement agencies.

#### **IV. ORDERING CLAUSES**

17. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that the Requests for Review or Waiver filed by the Petitioners as listed in the Appendix ARE GRANTED to the extent provided herein.

18. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to section

1.3 of the Commission's rules, 47 C.F.R. § 1.3, that sections 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(c)-(d) of the Commission's rules, 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(c)-(d), ARE WAIVED to the extent provided herein.

19. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that the applications associated with the Requests for Review or Waiver filed by the Petitioners as listed in the Appendix ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

20. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that USAC SHALL COMPLETE its review of each remanded application listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**9 Federal Communications Commission FCC 07-37**

Request For Review & Waiver Letter  
 New Covenant Christian School BEN 10714  
 CC Docket No. 02-6 CC Docket 96-45  
**APPENDIX**

<b>Requests for Review or Waiver Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>
Brownsville Independent School District	482620 482818	2005
Charlottesville City Schools	387023 387026 387283	2004
Cleveland County Memorial Library	401354 401368	2004
Coldwater Public Library	487376	2005
Dedham Public Schools	406505	2004
Dickens Public Library	299479	2002
Elbert County School District	452613 456680 476078 477346	2005
Granite School District	466373 468264 468281 468272 468255 452468	2005
Hancock County Public Library	397727	2004
Huntingdon Special School District	504027	2006
InterTechnologies Group	255133	2001
Jacksboro Independent School District	457383	2005
Kimball Public Library	492738	2006
Marathon County Public Library	477285	2005

Request For Review & Waiver Letter  
New Covenant Christian School BEN 10714  
CC Docket No. 02-6 CC Docket 96-45

Therefore we submit that funding FRN's be **maintained as approved** with FCDL **08/29/2006**

FRN#: **1440338 - \$39,240**

FRN#: **1440765 - \$25,920**

FRN#: **1440782 - \$17,280**

FRN# **1440811 -\$20,430**

Sincerely,

  
Joseph Alexander  
Superintendent