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## LathamCenters

*Passage to a brighter future*

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

November 9, 2010

### Request for Waiver

CC Docket No. 02-6

**Decision being addressed:** Notification of Improperly Disbursed Funds Recovery Letter dated September 8, 2010 (Attachment 1)

**Form 471 Application Numbers:** 431113

**FRN:** 1197113

**Funding Year:** 2004 (7/1/2004 – 6/30/2005)

**Billed Entity Number:** 194751

**SPIN:** 143027177

**Service Provider Name:** Chameleon Consulting, Inc.

**Applicant:** Latham School  
1646 Route 6A  
Brewster, MA 02631

**Applicant's Contact Person:** George McDonald  
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Dear Ms. Dortch:

On behalf of the Latham School ("Latham"), I am writing to request a waiver of FCC rules so that Latham will not be required to repay \$37,266.23 and potentially more in E-rate funds disbursed on its behalf for FY 2004.

Nationally known, innovative treatment in a beautiful setting.

Since 1970, we have been working together – with our students, residents, their families, and outstanding professionals – to bring hope and change to young people and adults who face tough challenges.

At Latham they receive respect and discover new potential to become responsible members of their communities.

USAC has indicated it will seek recovery of \$37,266.23 because the Form 486 for this FRN was filed before the technology plan covering that funding year was approved. We understand that the recovery amount is attributable to invoices dated prior to August 5, 2005, the approval date of the technology plan.

### BACKGROUND

In January 1999, when Latham was known as "Residential Rehabilitation Centers, Inc" (the name was changed on December 12, 2000), the school submitted a four-year technology plan to CELT covering FYs 1999 (July 1, 1999, through June 30, 2000) through 2002. CELT approved that Plan in October 1999. Latham then submitted its new Technology Plan to CELT on November 11, 2004, covering FYs 2003 through 2005. On August 5, 2005, CELT issued a letter of approval.

Latham filed a Form 471 for FY 2004 and, in April 2005, submitted a Form 486 for FY 2004 indicating it had a technology plan covering "the services received as indicated on this Form 486" that had been approved by CELT Corporation.

### ANALYSIS

In the School's view, the 1999 Technology Plan covered the services for which E-rate discounts were requested in FY 2004. The Plan originally covered FYs 1999 through 2002 and was approved in 1999. That plan was updated in January 2003 to cover FYs 2003 through 2006. There was a delay in sending the latter plan to CELT – it wasn't sent until November 2004. There was a good deal of back and forth between Latham and CELT before CELT approved the plan in August 2005.

Our belief was at that time that, since the 1999 plan had been approved, we met requirements with respect to technology plans. In our view, the 2003 plan was simply a revision of the 1999 plan and the 1999 approval covered the services until CELT approved the 2003 revision.

Given increasing demands on our staff and declining budgets that necessitate staff reductions, and given the complexity of the E-rate program, Latham decided to retain an E-rate consultant and chose E-Rate Central late last year to assist us with our participation in E-rate. E-rate Central staff have reviewed the records relating to the Notification of Improperly Disbursed Funds Letter and have advised us that, in fact, we were not in technical compliance with FCC rules relating to the timing of approval of technology plans. Based on that advice, we acknowledge that Latham's 2003 technology plan covering FY 2004 was not approved before the Form 486 was submitted for the FY 2004 FRNs and we are not asking you to overturn USAC's decision, but to waive your rules and direct USAC not to pursue recovery of FY 2004 E-rate funds over this issue.

First, Latham is a relatively small, non-profit human service agency that operates a school for special needs students and, as such, relies heavily on assistance from entities like the Schools and Libraries Division of USAC to give us the tools to bring technology

to the School and its students. Repayment of \$37,000 or more would be a serious hardship for Latham and require offsetting cuts elsewhere that would harm the education of our students.

Second, while we may have been in technical violation of the rules, we operated in good faith and simply were not aware of that technical violation. The E-rate funds bought eligible equipment for eligible students in an eligible school that has been used to support their education. There was no waste, fraud, or abuse involved in this situation – simply a ministerial failure to comply with the timing requirements for technology plan approval.

Clear precedent for a waiver in this case can be found in the FCC’s Brownsville ISD Order (FCC 07-37, Released March 28, 2007). In that Order, the Commission granted appeals by 32 schools and libraries of decisions by USAC that reduced or denied them E-rate funding because USAC determined that the funding requests were not supported by an approved technology plan. The Commission waived, in part, its technology plan rules in granting the appeals.

Paragraph 8 of the Order reads in part:

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. . . . Additional Petitioners missed deadlines 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.

Paragraph 10 of the Order reads:

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. 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. 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. Therefore, we remand the appeals to USAC for further consideration consistent with this Order.

TIMELINESS OF APPEAL

The Notification of Improperly Disbursed Funds Recovery Letter was dated September 8, 2010; therefore the deadline for an appeal was yesterday, November 8, 2010. Because of staff absences, this waiver request could not be signed yesterday. We ask that you waive that deadline and consider our request.

REQUEST

We ask that the Commission review our request for waiver in the spirit of the Brownsville Order: the funds at issue were used to bring advanced telecommunications and information services to our students, repayment of the funds would hamper our ability to provide 21<sup>st</sup> Century educational technology to our students – a goal of universal service, Latham did not attempt to defraud or abuse the E-rate program, and granting our request will have minimal effect on the Fund.

Sincerely,



Anne McManus  
Executive Director