

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

MAILED

MAR 15 2011

FCC Mail Room

In the Matter of)	
)	
Requests for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Chicago Public Schools)	File No. SLD-288954
Chicago, Illinois)	
)	
Coosa County School District)	File No. SLD-447881
Rockford, Alabama)	
)	
Gallup-McKinley County Public Schools)	File No. SLD-467362
Gallup, New Mexico)	
)	
Holyoke School District)	File No. SLD-482806
Holyoke, Massachusetts)	
)	
KIPP Academy)	File No. SLD-433110
Houston, Texas)	
)	
Whitley County School System)	File No. SLD-470478
Williamsburg, Kentucky)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: March 4, 2011

Released: March 7, 2011

By the Commission:

I. INTRODUCTION

1. In this order, we grant six requests for review of decisions by the Universal Service Administrative Company (USAC) denying applications for discounted services under the schools and libraries universal service support mechanism, also known as the E-rate program, for funding years 2002, 2004, and 2005.¹ USAC denied the applicants' funding requests on the grounds that the requested

¹ In this order, we use the term "appeals" to refer to the requests for review of decisions issued by USAC. Section 54.719(c) of our rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). Letter from Jane Kratochvil, E-rate Program Manager, Chicago Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 26, 2003) (Chicago Request for Review); Letter from Kathy Walls, Technology Coordinator, Coosa County School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (continued...)

services were ineligible because the applicants' contracts included services that went beyond basic maintenance of internal connections.² Based on the record before us, however, it appears that petitioners have been denied support for some eligible basic maintenance services. To the extent necessary, we find that good cause exists to justify waivers of the requirement imposed pursuant to section 54.506(b) that a technical support contract providing for more than basic maintenance services be deemed ineligible for discounts. We also waive section 54.504(d) to permit petitioners to remove ineligible basic maintenance services from their funding requests.³ Finally, we eliminate the requirement, beginning funding year 2011, that a technical contract that provides for more than basic maintenance services shall be deemed ineligible for discounts. To ensure that the appeals are resolved expeditiously, we direct USAC to complete its review of each underlying application and issue an award or denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ As applicants may only receive support for eligible services,⁵ the Commission releases a list of eligible services each year.⁶ Based on this list of eligible services and the Commission's rules, USAC denies funding for services ineligible for E-rate universal service support.

3. In the *Universal Service First Report and Order*, the Commission determined that support for internal connections includes "basic maintenance services" that are "necessary to the operation of the internal connections network."⁷ Subsequently, in the *Schools and Libraries Third Report and Order* and codified at section 54.506(b) of the Commission's rules, the Commission defined eligible basic maintenance services as "an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily

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(filed Nov. 9, 2005) (Coosa County Request for Review); Letter from John Samford, Assistant Superintendent of Business Services, Gallup-McKinley County Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Feb. 23, 2006) (Gallup-McKinley Request for Review); Letter from Nichole O'Neal, on behalf of Holyoke School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 28, 2005) (Holyoke Request for Review); Letter from Susie Crafton, KIPP Academy, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 4, 2005) (KIPP Request for Review); Letter from Thelma Jones, District Technology Coordinator, Whitley County School System, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Jun. 5, 2006) (Whitley Request for Review).

² See 47 C.F.R. 54.506(b).

³ 47 C.F.R. § 54.504(d).

⁴ 47 C.F.R. §§ 54.501-54.504.

⁵ See 47 C.F.R. § 54.504; *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9006-23 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); Instructions for Completing the Universal Service Schools and Libraries Services Ordered and Certification Form, OMB 3060-0806, at 17 (November 2004) (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities and uses); see also *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18832 (2010) (Appendix B: Eligible Services List for Funding Year 2011).

⁶ See 47 C.F.R. § 54.522.

⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 9021-22, para. 460.

provided in the marketplace to entities receiving such services.”⁸ Specifically, the Commission determined that basic maintenance includes “repair and upkeep of previously purchased eligible hardware, [and] wire,” and “basic technical support including configuration changes.”⁹ The Commission concluded, however, that basic maintenance services do not include: technical support contracts that provide more than basic maintenance;¹⁰ “services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment’s ability to transport information;”¹¹ and services such as “24-hour network monitoring and management.”¹²

4. Additionally, the Commission concluded that technical support contracts for basic maintenance of internal connections would not be eligible for support if they included any ineligible maintenance services.¹³ The Commission observed that “it is administratively difficult and burdensome to derive reasonable cost allocations for the eligible portions of services provided under a technical support contract.”¹⁴ Therefore, the Commission concluded that it was “simply not administratively feasible [for USAC] to determine what portion of a technical support contract is directed to basic maintenance,”¹⁵ and, thus, directed USAC not to fund contracts unless they contained only eligible maintenance services. Moreover, with respect to the eligibility of on-site technical support, the Commission stated that “[o]n-site technical support is not necessary to the operation of the internal connection network when off-site technical support can provide basic maintenance on an as-needed basis.”¹⁶

5. USAC denied the petitioners’ funding requests on the grounds that the contracts included services that went beyond eligible basic maintenance services because they: (1) included ineligible non-basic services in their maintenance agreements; (2) sought discounts for on-site basic maintenance arrangements; or (3) sought discounts on ineligible “consulting services.”¹⁷

⁸ 47 C.F.R. 54.506(b); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26921-22, para. 23 (2003) (*Schools and Libraries Third Report and Order*).

⁹ *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26921-22, para. 23.

¹⁰ *Id.* at 26922, para. 24.

¹¹ *Id.* at 26921-22, para. 23.

¹² *Id.*

¹³ *Id.* at 26922, para. 24.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 26922, para. 23.

¹⁷ See 47 C.F.R. 54.506(b); Letter from USAC, Schools and Libraries Division, to Elaine Williams, Chicago Public Schools, at 1-2 (dated Mar. 28, 2003) (USAC Chicago Appeal Decision); Letter from USAC, Schools and Libraries Division, to Todd Wingard, Coosa County School District, at 1-2 (dated Sept. 8, 2005) (USAC Coosa County Appeal Decision); Letter from USAC, Schools and Libraries Division, to John Samford, Gallup-McKinley County Public Schools, at 2 (dated Dec. 30, 2005) (USAC Gallup-McKinley Appeal Decision); Letter from USAC, Schools and Libraries Division, to Nichole O’Neal, on behalf of Holyoke School District, at 1-2 (dated Nov. 1, 2005) (USAC (continued...))

III. DISCUSSION

6. We grant these six appeals and direct USAC to provide the applicants with an opportunity to modify their funding requests to remove any ineligible basic maintenance services.

A. Requests for Ineligible Basic Maintenance

7. *Background.* USAC denied three petitioners – Coosa County School District (Coosa County), Holyoke School District (Holyoke), and KIPP Academy (KIPP) – support for basic maintenance because USAC concluded that their maintenance agreements included ineligible non-basic services.¹⁸ Specifically, USAC denied Coosa County discounts on \$3,400 per month in network maintenance service because USAC found that \$1,400 per month of the service contract was for ineligible technical support and, thus, denied the entire funding request.¹⁹ Coosa County subsequently appealed to USAC requesting the opportunity to revise its funding request to remove the ineligible services.²⁰ USAC denied Coosa County's appeal, stating that E-rate program rules did not permit USAC to accept new evidence on appeal, except where the applicant had not been given the chance to submit it during its initial review.²¹ Coosa County then filed the instant appeal with the Commission, asserting that its original funding request indicates that the technical support found ineligible by USAC for E-rate funding is, in fact, eligible for E-rate support.²²

8. USAC also denied Holyoke discounts on a maintenance contract because the contract included both eligible basic maintenance services and ineligible network management services.²³ USAC subsequently denied Holyoke's appeal to USAC seeking to revise its funding request to eliminate the requested discounts on ineligible services.²⁴ Holyoke then filed the instant appeal with the Commission, requesting the opportunity to revise its funding request to exclude the request for ineligible services.²⁵

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Holyoke Appeal Decision); Letter from USAC, Schools and Libraries Division, to Catherine North, KIPP Academy, at 3 (dated July 29, 2005) (USAC KIPP Appeal Decision); Letter from USAC, Schools and Libraries Division, to Thelma Jones, Whitley County School District, at 2 (dated May 15, 2006) (USAC Whitley Appeal Decision).

¹⁸ See USAC Coosa County Appeal Decision; USAC Holyoke Appeal Decision; USAC KIPP Appeal Decision.

¹⁹ See *supra* para. 2; 47 C.F.R. § 54.504(d); Letter from USAC, Schools and Libraries Division, to Kathy Walls, Coosa County School District at 5 (dated June 27, 2005) (Coosa FCDL). Coosa County requested discounts for services provided by a senior systems engineer (\$2,000 per month) and a senior network installation technician (\$1,400 per month). See Coosa County Request for Review at 3. USAC's review, however, found that some of the services that were to be provided by the senior systems engineer were ineligible services. Coosa FCDL at 5.

²⁰ See Letter from Kathy Walls, Technology Coordinator, Coosa County School District, to USAC, Schools and Libraries Division (dated July 1, 2005).

²¹ See USAC Coosa County Appeal Decision at 1-2.

²² See Coosa County Request for Review at 1.

²³ Letter from USAC, Schools and Libraries Division, to Nichole O'Neal, on behalf of Holyoke School District at 5 (dated June 27, 2005); Letter from USAC, Schools and Libraries Division, to Nichole O'Neal, on behalf of Holyoke School District at 1-2 (dated Nov. 1, 2005) (one of the services requested was "network management and optimization," a network management service, and thus ineligible for support).

²⁴ USAC Holyoke Appeal Decision at 1-2.

²⁵ See Holyoke Request for Review at 1.

USAC denied funding to KIPP for discounts on a \$28,800 maintenance contract because it found that 13 percent of the purchases associated with that maintenance contract were ineligible, thus requiring USAC to deny the entire maintenance contract.²⁶ KIPP then filed the instant appeal, stating that its maintenance contract specifically states that it would only cover E-rate eligible equipment.²⁷

9. *Discussion.* We direct USAC to provide Coosa County, Holyoke, and KIPP with an opportunity to remove any ineligible maintenance services from their funding requests so that they can receive funding for eligible basic maintenance services.²⁸ As explained, we previously held that technical support contracts for basic maintenance of internal connections would not be eligible for support if they included any ineligible maintenance services on the premise that it would be administratively infeasible for USAC to determine what portion of the contract was directed toward basic maintenance, and thus required USAC to deny support for such contracts. Based on our experience since the release of the *Third Report and Order*, however, we now find that it is generally feasible for USAC reviewers to distinguish between eligible and ineligible services when both are included in one contract for basic maintenance services.²⁹ We thus conclude that it is no longer in the public interest to deny funding for all elements of a contract for basic maintenance services if even one element of the contract is ineligible for support. We therefore waive the requirement that such contracts be deemed ineligible for support for these six appeals, and we waive section 54.504(d) of our rules to permit petitioners to remove ineligible services from their funding requests.³⁰

10. In addition, henceforth, we direct USAC to approve applications for support for eligible basic maintenance services even when the eligible basic maintenance services are included in the same contract as ineligible maintenance services, as long as applicants are able to isolate and accurately identify the costs of the eligible services.³¹ This ruling shall apply beginning in funding year 2011 for applications and immediately for all pending appeals. If, however, applicants are unable to separate the eligible and

²⁶ See *supra* para. 4; USAC KIPP Appeal Decision at 3.

²⁷ KIPP Request for Review at 1.

²⁸ In the three instances here, USAC has already identified the ineligible portion of the services. Although the contract Holyoke provided to USAC during its application review did not indicate what percentage of the services it purchased were ineligible, Holyoke states that its vendor has indicated that the ineligible network services represent 9% of its funding request. Holyoke Request for Review at 1.

²⁹ Indeed, USAC in certain instances has been able to determine the exact percentage of services in a maintenance contract that were ineligible for support because they were not basic maintenance services. See USAC KIPP Appeal Decision at 3.

³⁰ The Commission may waive any provision of its rules on its own motion and 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). 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). In sum, waiver is appropriate if special circumstances warrant 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; *accord, Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

³¹ USAC has provided applicants with examples of how to distinguish between eligible and ineligible technical maintenance services. See USAC website, Schools and Libraries, Cost Allocation Guidelines for Products and Services, Example 4, <http://www.universalservice.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx#ex4> (last visited Feb. 28, 2011).

ineligible services in a basic maintenance contract, USAC should deny funding for the entire contract.³² Nevertheless, we recommend to applicants that they attempt to avoid any potential problems or delay in the processing of their applications by entering into contracts that only include eligible basic maintenance services. Applicants ultimately bear the responsibility for demonstrating that support is requested only for eligible services.

11. We take this action without giving notice and seeking public comment on this change, because we find that such notice and comment is unnecessary.³³ Our initial adoption of this prophylactic requirement that technical support contracts that include both eligible and ineligible services be deemed ineligible for support was based on the premise that it would be both administratively difficult and burdensome for USAC to review such contracts. Now experience has convinced us and USAC staff that the premise is not valid. Because the requirement was adopted for administrative efficiency, we find that notice and public comment are unnecessary to effectuate this change. Rather, we find it in the public interest to eliminate the requirement immediately.

B. Request for Consulting Services

12. *Background.* USAC denied Chicago Public Schools (Chicago) support for basic maintenance services because Chicago characterized the services as “consulting services,” which are ineligible for support.³⁴ In its appeal to the Commission, Chicago states that USAC denied its funding request despite Chicago’s assertion to USAC that it had been using the term “consulting” more broadly to include both ineligible and eligible basic maintenance services.³⁵ Furthermore, Chicago asserts that the specific services it sought in the funding request at issue were eligible support services, not ineligible consulting services.³⁶

13. *Discussion.* With respect to Chicago’s appeal, consistent with precedent, we direct USAC to review the set of services that Chicago’s service provider actually included in the bundle that Chicago characterized to USAC as “consulting services.”³⁷ To the extent that a portion of the services requested by Chicago qualify as eligible basic maintenance services, Chicago should allocate the costs between the eligible basic maintenance and other ineligible “consulting services” and seek support for only the portion of the services that qualify as eligible basic maintenance.³⁸ We remind applicants that they need to be specific in their requests for service, as USAC should grant funding only when the service described is eligible.

³² See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26922, para. 24.

³³ 5 U.S.C. § 553(b)(3)(B).

³⁴ See Letter from USAC, Schools and Libraries Division, to Elaine Williams, Chicago Public Schools at 1-2 (dated Mar. 28, 2003).

³⁵ See Chicago Request for Review at 1-2.

³⁶ *Id.*

³⁷ See *Request for Review by Providence Public School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-470293, CC Docket No. 02-6, Order, 21 FCC Rcd 9220 (Wireline Comp. Bur. 2006) (directing USAC to consult with the applicant concerning the confusing use of a term to describe the basic maintenance service it sought before rejecting the applicant’s request).

³⁸ See *supra* para. 8.

C. Requests for On-site Basic Maintenance

14. *Background.* USAC denied two petitioners – Gallup-McKinley County Public Schools (Gallup-McKinley) and Whitley County School System (Whitley) – discounts for on-site basic maintenance arrangements.³⁹ Specifically, in its appeal to the Commission, Gallup-McKinley explains that its request for on-site support for funding year 2005 was based partly on USAC’s rejection of its request for off-site support for funding year 2004.⁴⁰ Gallup-McKinley states that, in funding year 2004, it interpreted the *Schools and Libraries Third Report and Order* as stating that on-site basic maintenance was ineligible if off-site support was available, it requested funding for service from an off-site workforce based two hours away.⁴¹ USAC subsequently denied Gallup-McKinley’s 2004 funding request as “not cost-effective.”⁴² Therefore, for funding year 2005, Gallup-McKinley requested support for on-site basic maintenance service.⁴³ USAC, however, also subsequently rejected Gallup-McKinley’s 2005 funding request, stating that it was a request for “on-site technicians . . . providing services that could be provided by off-site technical support on an as-needed basis.”⁴⁴ Gallup-McKinley appealed USAC’s funding year 2005 decision but USAC denied its appeal again, stating that “off-site technical support can provide the basic maintenance on an as-needed basis.”⁴⁵ Gallup-McKinley thus filed the instant appeal asserting that USAC did not give it an opportunity to explain why on-site service was more cost-effective than off-site service and requests the Commission to direct USAC to provide Gallup-McKinley with this opportunity.⁴⁶

15. USAC also denied Whitley’s request for discounts for on-site basic maintenance, finding that Whitley had failed to “demonstrate that off-site technical support could not be provided on an as-needed basis or that on-site technical support is more cost effective.”⁴⁷ Whitley subsequently filed the instant appeal with the Commission justifying its need for on-site basis maintenance, arguing that off-site maintenance would require at least 3½ hours of travel time each way, preventing Whitley from recovering from any network outages until half of a school day had already been lost.⁴⁸ Whitley also states that its previous off-site maintenance vendor was not always able to dispatch someone to help immediately, resulting in its schools losing network access for a week while waiting for the vendor to fit Whitley into its schedule.⁴⁹

³⁹ See USAC Gallup-McKinley Appeal Decision; USAC Whitley Appeal Decision

⁴⁰ See Gallup-McKinley Request for Review at 2.

⁴¹ *Id.* (referencing *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26922 para. 23).

⁴² See Gallup-McKinley Request for Review at 2.

⁴³ *Id.*

⁴⁴ See USAC Gallup-McKinley Appeal Decision at 1.

⁴⁵ See Gallup-McKinley Request for Review at 2; USAC Gallup-McKinley Appeal Decision at 2.

⁴⁶ See Gallup-McKinley Request for Review at 1-2.

⁴⁷ See USAC Whitley Appeal Decision at 2.

⁴⁸ See Whitley Request for Review at 1-2.

⁴⁹ *Id.*

16. *Discussion.* With respect to the Gallup-McKinley and Whitley appeals, we direct USAC to give Gallup-McKinley and Whitley the opportunity to demonstrate that their on-site basic maintenance requests are the most cost-effective option for providing this service. The Commission determined that “[o]n-site technical support is not necessary to the operation of the internal connection network when off-site technical support can provide basic maintenance on an as-needed basis.”⁵⁰ At the same time, however, it appears that off-site technical support may not always be the most cost-effective, as required by Commission rules.⁵¹ Thus, where off-site technical support may not be the most cost-effective, we believe that applicants should be provided an opportunity to demonstrate their need for on-site technical support.⁵² We therefore remand Gallup-McKinley’s and Whitley’s underlying applications to USAC for further inquiry. If USAC determines, after further inquiry, that the on-site basic maintenance requests are the most cost-effective option for this service, then USAC should grant their requests. If USAC finds, however, that there is another, more cost-effective option, then USAC should deny funding. Thus, consistent with the Commission’s rules, applicants that seek on-site technical service must present USAC with sufficient evidence demonstrating that such on-site technical service is more cost-effective than utilizing off-site support in their specific situations.⁵³

17. Accordingly, we grant these six appeals and remand the underlying applications to USAC for further action consistent with this order. There is no evidence here of waste, fraud, abuse, misuse of funds, or a failure to adhere to core program requirements. We further note that granting these appeals should have a minimal impact on the universal service fund because the monies needed to fund these requests, should they all be fully funded, have already been collected and held in reserve.⁵⁴ Thus, denial of funding in these cases, without providing the applicants an opportunity to correct their mistakes, would inflict undue hardship on the applicants and would not further the purposes of section 254(h) or serve the public interest.⁵⁵ To ensure that the appeals are resolved expeditiously, we direct USAC to complete its review of each of the underlying applications and issue an award or denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.

18. We emphasize, however, the limited nature of this decision. Although we grant the appeals addressed here, this order does not alter the obligation of participants in the E-rate program to request support only for eligible basic maintenance services.⁵⁶ Moreover, in remanding these applications to

⁵⁰ *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26922, para. 23.

⁵¹ See 47 C.F.R. 54.504(c)(1)(xi).

⁵² For example, to the extent that an applicant is located a significant distance from the nearest providers of basic maintenance service and where it needs such services on a more frequent basis, it is possible that on-site basic maintenance may be the most cost-effective means for obtaining eligible basic maintenance service if there are additional travel charges.

⁵³ See 47 C.F.R. 54.504(c)(1)(xi).

⁵⁴ We estimate that the requests for review granted in this order involve applications for approximately \$3.2 million in funding. 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 2011* (Jan. 31, 2011).

⁵⁵ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5321, para. 11 (2006).

⁵⁶ 47 C.F.R. § 54.506(b).

USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.⁵⁷ We remind USAC of its obligation to determine independently whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes, and to decline to disburse funds where this standard is not met.

19. Finally, we emphasize that we are committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, this action does not limit the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or our rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or our 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 our procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

20. 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, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the requests for review by Chicago Public Schools, Coosa County School District, Gallup-McKinley County Public Schools, Holyoke School District, KIPP Academy, and Whitley County School System ARE GRANTED and the underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

21. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that section 54.504(d) of the Commission's rules, 47 C.F.R. § 54.504(d), IS WAIVED to the extent provided herein.

22. 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 the underlying applications and ISSUE an award or denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.

23. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the waivers granted herein SHALL BE EFFECTIVE upon release.

⁵⁷ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

24. IT IS FURTHER ORDERED, pursuant to 5 U.S.C. § 553(d)(3) and section 1.427(b) of the Commission's rules, 47 C.F.R. § 1.427(b), that the rest of this order shall be effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary