

# NEW MEXICO SCHOOL FOR THE DEAF

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April 30, 2012

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

Re **CC Docket No. 02-6**

Petition for Waiver of FCC Rule § 54.508 (Technology Plans)  
Form 471 Application Nos. 699883 (2009), 749043 (2010), 749552 (2010),  
822109 (2011), 822110 (2011)  
Applicant: New Mexico School for the Deaf, BEN 99286

Dear Secretary Dortch,

With this letter New Mexico School for the Deaf ("NMSD") requests a waiver of certain provisions of the technology plan approval requirement for funding applications under the Schools and Libraries Universal Service Support Mechanism ("E-Rate") as specified at § 54.508 for funding requests within each captioned funding application.

## **Background**

NMSD is a school dedicated to serving the special educational needs of about 150 New Mexico deaf and hearing-impaired students.

In January of this year USAC initiated a Program Quality Assurance assessment of one particular NMSD funding request for Funding Year 2011. As part of its assessment USAC requested from NMSD certain documentation for that funding request, including documentation of technology plan approval.

NMSD was able to satisfy all of USAC's documentation requests other than evidence of timely formal technology plan approval. Although NMSD was able to locate its FY2009-FY2011 technology plan, it was not able to locate in its own records a technology plan approval letter. Furthermore, due to reorganization within the New Mexico Public Education Department ("NM PED"), the bureau which had been responsible for technology plan approval has been dissolved, and a different division within NM PED is now responsible for technology plan approvals.

The end result is that although NMSD is certain that prior to the start of the 2009 Funding Year it had a written technology plan in place for Funding Years 2009 through

2011, NMSD was not able to produce evidence that the technology plan had been approved prior to the start of the 2009 Funding Year.

In order to demonstrate (with the possible exception of the required formal approval) that NMSD had compiled a technology plan with all of the required elements, in February of this year NMSD submitted its FY2009-FY2011 technology plan to the current technology plan approver (NM PED's Information Technology Division) for evaluation. We have attached as Appendix A an email reporting the results of their evaluation. Note that the Information Technology Division confirms that records exist showing that we had submitted a technology plan for evaluation on a timely basis, and that they now find that this plan did comply with state (and implicitly with E Rate) requirements as they existed at the start of the 2009 Funding Year.

Should the Wireline Competition Bureau desire any additional information it its evaluation of this waiver petition, NMSD pledges to respond to any such request on a timely basis and to the best of its ability.

### **Analysis**

Although NMSD was not able to provide evidence showing compliance with one technical requirement of § 54.508, NMSD did in good faith plan for the implementation of new technology. Furthermore, the elements of the plan and even the timeliness of the preparation of the plan did meet the requirements of § 54.508.

In the *Al-Ishan Academy Order*<sup>1</sup>, the Wireline Competition Bureau ("Bureau") found that a waiver is justified for applicants who did not fully comply with the technical requirements of § 54.508, "yet in good faith planned for the implementation of new technology in their schools in accordance with state, local, or other internal requirements". In the instant case NMSD met and exceeded that standard, as the content of the plan itself was independently found to fully meet the content standards of § 54.508.

In both the *Al-Ishan Academy Order* and the earlier *Brownsville Order*<sup>2</sup>, the Bureau and the Federal Communications Commission ("Commission") respectively found that the petitioners, even if not technically complying with the technology plan rules, had satisfied the policy behind the requirements; and they further found that requiring technical compliance with certain technology plan rules neither furthers the universal service objectives of 47 USC § 254(h) nor serves the public interest, and would instead cause undue hardship to the applicants. By contrast, the Commission found in the *Brownsville Order* that waiving the applicable technology plan rules would serve the public interest by preserving and advancing universal service.

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<sup>1</sup> *Al-Ishan Academy Order*, 25 FCC Rcd 17744

<sup>2</sup> *Brownsville Order*, 22 FCC Rcd 6045

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The cited orders were consistent with the *Bishop Perry Order*<sup>3</sup>, where the Commission found that under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of 47 USC § 254 – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.

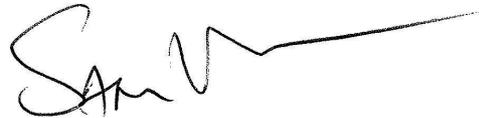
### **Request for Relief**

For the reasons stated in this letter, NMSD respectfully requests that the Bureau grant a waiver of § 54.508 to the extent necessary to permit funding of the affected funding applications.

NMSD further respectfully asks that the Bureau, consistent with precedent in other orders<sup>4</sup> waiving technical compliance with certain E-Rate requirements, direct USAC to waive any of the subsequent deadlines<sup>5</sup> for the captioned funding applications.

Finally, on behalf of our current students, NMSD respectfully requests that the Bureau expedite consideration of this petition. Timely action by the Bureau would support the goals of the E-Rate program, especially with respect to our current students whose educational success would be compromised by a delay in funding or an adjustment of previously disbursed funding.

NEW MEXICO SCHOOL FOR THE DEAF



Sam Montoya  
IT Manager

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<sup>3</sup> *Bishop Perry Middle School Order*, 21 FCC Rcd 5316

<sup>4</sup> E.g., see *Covert Public School District Order*, para. 5, 26 FCC Rcd 15144.

<sup>5</sup> E.g., once NMSD belatedly realized it might not have secured formal approval of its technology plan, it was not able to make the certifications required on FCC Form 486; therefore, at least one Form 486 has not been submitted on a timely basis.