

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Requests for Waiver and Review of Decisions )
of the Universal Service Administrator by )
Acorn Public Library District ) File Nos. SLD-637819, et al.
Oak Forest, IL, et al. )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: October 30, 2008

Released: October 30, 2008

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant 78 requests from petitioners seeking waivers of the FCC Form 471 filing window deadline for Funding Years 2004-2008 under the schools and libraries universal service support mechanism, also known as the E-rate program. USAC denied applicants' requests for funding under the E-rate program on the grounds that applicants submitted their FCC Forms 471 after the filing window deadline. Consistent with the Commission's Bishop Perry Order and the Wireline Competition Bureau's (Bureau) Academy for Academic Excellence Order, we grant the waiver requests because we find that special circumstances exist to justify a waiver of the Commission's rules. Accordingly, we remand the underlying applications listed in the appendix to USAC for further action consistent with this order. To ensure that these underlying applications are resolved expeditiously, we direct USAC to complete its review of each of these applications and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

1 A list of the requests for review is attached in the appendix. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (USAC) may seek review from the Commission. 47 C.F.R. § 54.719(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied funding because their FCC Forms 471 were submitted after the filing window deadline.

2 See Appendix; 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 (2006) (Bishop Perry Order) (granting waivers of the FCC Form 471 filing window deadline); Request for Review of the Decision of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-539076, 539722, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 4747 (Wireline Comp. Bur. 2007) (Academy for Academic Excellence Order) (granting similar waivers to those granted in the Commission's Bishop Perry Order); see 47 C.F.R. § 54.507(c).

## 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, basic maintenance and internal connections.<sup>3</sup> The applicant must file an FCC Form 470 to request discounted services.<sup>4</sup> After the FCC Form 470 is posted on USAC's website for all potential competing service providers to review, the applicant must wait at least 28 days before entering an agreement for services.<sup>5</sup> After entering into a contract for eligible services, the applicant files the FCC Form 471 to request discounts on the eligible services to be provided.<sup>6</sup> The FCC Form 471 must be filed within each funding year's "filing window" because, under Commission rules, USAC treats all filings made within the filing window as if the applications were simultaneously received.<sup>7</sup> Since 1999, the requests for funding filed within the filing window have always exceeded the annual cap on funding.<sup>8</sup> Accordingly, if an FCC Form 471 is filed outside of the window, the applicant will not receive funding.

3. In 2006 and 2007, in the *Bishop Perry Order* and the *Academy for Academic Excellence Order*, the Commission and the Bureau, respectively, granted waivers to applicants who missed the FCC Form 471 filing window deadline due to circumstances beyond their control, including inclement weather, technical malfunctions, school reorganizations, misunderstandings/confusion, personal emergencies, or inadvertent errors.<sup>9</sup> Similarly, in this instance, USAC denied funding to petitioners under the E-rate program because the applicants filed their FCC Form 471 applications after the filing window deadline. In their appeals to the Commission, the petitioners request waivers of the deadline for filing the FCC Forms 471.

## III. DISCUSSION

4. In this order, we grant 78 requests from petitioners seeking waivers of the FCC Form 471 filing window deadline for Funding Years 2004-2008 under the E-rate program.<sup>10</sup> We find that the actions we take here will continue to provide relief from these types of errors in the application process,

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<sup>3</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>4</sup> 47 C.F.R. § 54.504(b).

<sup>5</sup> 47 C.F.R. § 54.504(b)(4).

<sup>6</sup> 47 C.F.R. § 54.504(c); *see, e.g.*, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

<sup>7</sup> 47 C.F.R. § 54.507(c).

<sup>8</sup> A review of E-rate funding since 1999 shows that E-rate funds have been exhausted before satisfying all of the priority two funding requests of those applicants who filed within the filing window. *See* USAC website, Automated Search of Commitments, <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (retrieved Aug. 18, 2008).

<sup>9</sup> *See Bishop Perry Order*, 21 FCC Rcd at 5321-22, para. 12; *Academy of Academic Excellence Order*, 22 FCC Rcd at 4748-49, para. 5.

<sup>10</sup> *See* Appendix. 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) (*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.

thereby promoting 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 actually obtain access to discounted telecommunications and information services.<sup>11</sup> At the same time, we retain our commitment to protecting against 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 program participation and compliance with E-rate program rules.

5. *FCC Forms 471 Filed Within 14 Days of Filing Window Deadline.* We grant 55 waiver requests where the petitioners filed their FCC Forms 471 within 14 days after the FCC Form 471 filing window deadline.<sup>12</sup> As the Commission observed in the *Bishop Perry Order*, the primary jobs of most of

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<sup>11</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>12</sup> See Letter from Karen Miner, Acorn Public Library District, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed June 26, 2008); Letter from Moe Zwebti, Benicia Unified School District, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed July 3, 2008); Letter from Rebecca Flowers, Bloom-Vernon Local School District, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 21, 2006); Letter from Joy Duncan, Bridgewater Grammar School, to Regina Brown, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 15, 2008); Letter from Gary Davis, Carroll County Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 21, 2008); Letter from Julio Paez, Center Consolidated School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed June 16, 2008); Letter from Karla McCale, Centerville Public Schools (a/k/a Sand Coulee School Dist. 5 & C), to Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 14, 2008); Letter from Deanna Patzer, Central High School, to Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 28, 2007); Letter from Joseph Naparstek, Chabad of Myrtle Beach, to Office of the Secretary, Federal Communications Commission (filed Sept. 13, 2007); Letter from Evelyn Dorsey, Crescent-Iroquois CUSD 249, to Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed June 2, 2008); Letter from Sharon Swifka, Davis Joint Unified School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed Oct. 24, 2007); Letter from E. Michael Wilson, Delhi Charter School, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Jan. 15, 2008); Letter from Mark Lacke, Edgar School District, to Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 15, 2007); Letter from Verlyne Jolley, on behalf of Edmond Independent School District 12, to Federal Communications Commission, CC Docket No. 02-6 (filed May 30, 2008) (Although USAC denied funding because it did not receive Edmond's FCC Form 471, the record contains evidence that Edmond faxed in the FCC Form 471 on February 17, 2007, which was within 14 days of the filing window deadline); Letter from Lynne Phillips, Fall Mountain Regional School District, to Office of the Secretary, Federal Communications Commission (filed Aug. 8, 2007); Letter from Denise Stevens, Farragut Community School District, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed June 24, 2008); Letter from David Gallinat, Fenton Area Public Schools, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 3, 2008); Letter from Judith Anglin, First City Libraries, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed July 7, 2008); Letter from Dale Salberg, Fosston Public School, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed May 19, 2008); Letter from David Meyer, Franklin County School District, to Marlene Dortch, Federal Communications Commission (filed Feb. 19, 2008); Letter from Theresa Schulz, Fredericksburg Community School District, to Federal Communications Commission (filed June 11, 2008); Letter from Bradley Gray, Gallatin County School System, to Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed July 17, 2007); Letter from Martin Espinola, Gill-Montague Regional School District, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 11, 2008); Letter from Nancy Travers, Glenpool Public Schools, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 24, 2008); Letter from Lyn Crouse, Greater Canonsburg Public Library, to Federal Communications Commission (filed Aug. 8, 2007); Letter from Rebecca Kinyo, Holy Guardian Angels Regional School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 12, 2008); Letter from Kathleen Klindt, Holy Rosary Catholic School, to Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 25, 2008); Letter from Steve Clegg, Joe Barnhart Bee County Library, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 17, 2008); Letter from Jeremy Stober, Kalida Local School, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 29, 2008); Letter from Judith Anglin,

the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts.<sup>13</sup> Even when a school official has learned how to correctly navigate the E-rate application process, unexpected events may cause unanticipated delays. We find that the delay in these specific cases was not likely to impede USAC's ability to administer the E-rate program. Because the violation at issue is procedural, not substantive, we find that complete rejection of each of these applications is not warranted.<sup>14</sup> Therefore, in the absence of any evidence of waste, fraud, or abuse, misuse of funds, or a failure to adhere to core program requirements and because the FCC Form 471 was filed within 14 days after the filing window deadline, we find it in the public interest to waive the FCC Form 471 deadline.<sup>15</sup>

6. *Illness or Death of E-rate Staff or Death in Family.* Consistent with the Commission's findings in the *Bishop Perry Order*, we grant 12 waiver requests where the petitioners filed their FCC

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Ketchikan Public Library, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed June 20, 2008); Letter from Linda Erkhart, Lake Blackshear Regional Library System, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 23, 2008); Letter from Robert Gray, Lead Hill School District 4, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Feb. 25, 2005); Letter from Jeff Blakeney, Magnet Cove School District, to Federal Communications Commission (filed July 31, 2007); Letter from David Nahoumi, Maimonides School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 16, 2008); Letter from Joy Duncan, Maine School Administrative District 1, to Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 15, 2008); Letter from Karen Laird, Metropolis Public Library, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed May 22, 2008); Letter from Donald Westhoff, Mill Creek Valley Schools, to Federal Communications Commission (filed Oct. 22, 2007); Letter from Ryan Stockham, Minford Local Schools, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed June 11, 2008); Letter from Robert Fiorini, Palacios Independent School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed June 13, 2008); Letter from Ronald Riedi, Pen Argyl Area School District, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed May 6, 2008); Letter from Julie Dwyer, Pope John XXIII Jr./Sr. High School, to Federal Communications Commission, CC Docket No. 02-6 (filed July 24, 2008); Letter from Wilma Jones, Powell County Public Library, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed June 11, 2008); Letter from Priddy Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 1, 2005); Letter from Karl Hagelin, Queen Anne's County Public Schools, to Marlene Dortch, Federal Communications Commission (filed Mar. 31, 2008); Letter from Mary Vance, Sacred Heart School (Ohio), to Federal Communications Commission (filed Aug. 2, 2007); Letter from Charlotte Taylor, St. Charles Community Schools, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 17, 2008); Letter from Casey Hayward, St. Mary's Springs High School, to Marlene Dortch, Federal Communications Commission (filed Apr. 30, 2008); Letter from Tim Widener, Shirley Public School District, to Federal Communications Commission (filed Aug. 15, 2007); Letter from Nanette Waggoner, Snelling-Merced Falls School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 20, 2008); Letter from Vicki Thibodeaux, South St. Landry Community Library, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed July 21, 2008); Letter from Sheri Darrough, Stanislaus County Library, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 23, 2007) (for SLD-584393); Letter from Dorothy Siles, Taylorville Public Library, to Federal Communications Commission, CC Docket No. 02-6 (filed July 24, 2008); Letter from Eva Lynch, Waterford Township Free Public Library, to Marlene Dortch, Federal Communications Commission (filed July 9, 2008); Letter from Dan Sieling, Watertown-Mayer Public Schools, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Jan. 11, 2008); Letter from Christopher Bordeaux, Wounded Knee School District, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Oct. 27, 2006).

<sup>13</sup> *Bishop Perry Order*, 21 FCC Red at 5323, para. 14.

<sup>14</sup> *Id.*

<sup>15</sup> Although we find that good cause exists generally to grant these waiver requests, we are not extending the filing window generally. Applicants are still required to file within the window to receive funding commitments and E-rate funds in the normal course. Applicants will have to file waiver requests if they miss the deadline. Applicants thus have an incentive to timely file their FCC Forms 471 to avoid this delay.



Forms 471 late because of an illness of the E-rate staff person or from the death of a member or his or her family.<sup>16</sup> We find that, especially in small school districts, it is in the public interest to grant a reasonable amount of extra time to applicants when the E-rate staff person is temporarily unavailable due to a serious illness or the death of a family member. We also find that it would be an undue hardship to expect small applicants to train multiple staff members to handle E-rate filings in anticipation of unexpected absences due to illness and death, unless such absences should have been foreseeable.

7. *Circumstances Beyond Applicant's Control.* We grant the waiver request of two petitioners who filed their FCC Forms 471 more than 14 days after the FCC Form 471 filing window deadline due to delays caused by circumstances beyond their control.<sup>17</sup> As the Commission discussed in the *Bishop Perry Order*, when circumstances beyond the applicant's control cause the applicant to miss a deadline on a matter that is procedural, not substantive, a complete rejection of the applicant's funding request is not warranted.<sup>18</sup> In one case, a technical problem with USAC's online filing system misidentified one of the applicant's service providers, which prevented the system from accepting the applicant's submission.<sup>19</sup> USAC's delay in correcting the error prevented the applicant from submitting the application within 14 days after the FCC Form 471 filing window deadline.<sup>20</sup> In another case, an applicant states that it was unable to enter data directly online and a USAC staff person aided it by entering all its data and then instructing it to click on the "enter" button.<sup>21</sup> Although it states that it immediately did so, the system did not process the request.<sup>22</sup> We find that USAC's delay in correcting the former problem and an apparent

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<sup>16</sup> *Bishop Perry Order*, 21 FCC Rcd at 5322-23, paras. 13-14; *Academy of Academic Excellence Order*, 22 FCC Rcd at 4748, para. 4 n.11. See Letter from Mark Williams, Dothan City Schools, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 2, 2007); Letter from Susan Mettlen, Elizabeth Public Schools, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed Aug. 24, 2007) (SLD-575148); Letter from Maria Munguia, Father Yermo Schools, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 28, 2007); Letter from Maria Munguia, Father Yermo Schools, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 20, 2007); Letter from Kathy Steinert, Mount Olive Township School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed Sept. 24, 2007) (SLD-562011); Letter from Kathy Steinert, Mount Olive Township School District, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed Sept. 24, 2007) (SLD-562248); Letter from Kathryn Redd, Nucla Public Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 1, 2007); Letter from Sheri Darrrough, Stanislaus County Library, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed May 19, 2008); Letter from Mark Terry, Texas Preparatory School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 21, 2007); Letter from Vince Gonillo, Chittenden Central Supervisory Union, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed May 19, 2008); Letter from Ann Stephens, Keene Memorial Library, to Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 3, 2007); Letter from Jennifer Fusano, Latrobe Elementary School District, to Marlene Dortch, Federal Communications Commission (filed Aug. 20, 2007).

<sup>17</sup> See Letter from Jim Biwer, Kelso School District #458, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 10, 2008) (Kelso School Request for Waiver); Letter from Jeff Birch, Cassia Joint School District 151, to Federal Communications Commission (filed June 4, 2008) and Letter from Jeff Birch, Cassia Joint School District 151, to Federal Communications Commission (filed July 15, 2008) (Cassia July Request for Waiver).

<sup>18</sup> See *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

<sup>19</sup> See Kelso School Request for Waiver.

<sup>20</sup> *Id.*

<sup>21</sup> See Cassia July Request for Waiver.

<sup>22</sup> *Id.*

error in USAC's online filing system in the latter case were beyond the applicants' control, thus justifying a waiver of the FCC Form 471 filing window deadline in these instances.

8. *FCC Forms 471 Timely Filed Without Certification.* We grant nine requests for review where the petitioners either timely filed their FCC Forms 471 or filed their FCC Forms 471 within 14 days of the filing window deadline but failed to timely file their certifications.<sup>23</sup> Consistent with our direction above, we waive the FCC Form 471 filing window deadline for those petitioners that filed their FCC Forms 471 within 14 days of the FCC Form 471 filing window deadline.<sup>24</sup> Further, consistent with the Commission's direction in the *Bishop Perry Order*, we direct USAC to notify these applicants in writing of any missing or incomplete FCC Form 471 certifications, and to grant the applicants an additional 15 calendar days after receipt of such notice to file their FCC Form 471 certifications.<sup>25</sup>

9. Accordingly, based on the facts and circumstances of these specific cases, we find that special circumstances warrant a waiver of the FCC Form 471 filing window deadline found in section 54.507(c) of the Commission's rules for the petitioners listed in the appendix.<sup>26</sup> As the Commission found in the *Bishop Perry Order*, complete rejection of their applications is not warranted, given that the violation at issue is procedural, not substantive.<sup>27</sup> Like the applicants in the *Bishop Perry Order*, the applicants listed in the appendix have demonstrated that rigid adherence to filing procedures does not further the purposes of section 254(h) of the Act or serve the public interest.<sup>28</sup> We recognize, however, that filing deadlines are necessary for the efficient administration of the E-rate program. Although we grant the requests for review addressed here, this order does not alter the obligation of participants in the E-rate program to fully comply with the Commission's procedural rules, which are vital to the efficient operation of the E-rate program.<sup>29</sup> We also continue to require E-rate applicants to submit complete and accurate information to USAC as part of the application process.

10. We further note that granting these requests for waiver 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.<sup>30</sup> We therefore find that good cause exists to

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<sup>23</sup> See *Bishop Perry Order*, 21 FCC Rcd at 5325, paras. 18-20; Letter from Brian Patton, Antietam School District, to Federal Communications Commission, CC Docket No. 02-6 (filed July 7, 2008); Letter from Patrick Goff, Garden Valley School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed July 29, 2008); Letter from Ann Bachman, House Memorial Library, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 21, 2008); Letter from Charles Sandro, Mason County Central School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 29, 2004) (certification subsequently filed on Apr. 5, 2004); Letter from Kim Weigle, Sacred Heart School (Iowa), to Federal Communications Commission (filed Feb. 27, 2008); Letter from St. Peter Catholic School, to Federal Communications Commission, CC Docket No. 02-6 (filed June 20, 2008); Letter from Jeff Hippen, Sterling Schools, to Marlene Dortch, Federal Communications Commission (filed Oct. 22, 2007); Letter from Jim Earle, on behalf of Summit Academy, to Marlene Dortch, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 10, 2008); Letter from Jacki Radecki, Wisconsin Center for the Blind & Visually Impaired, to Federal Communications Commission, CC Docket No. 02-6 (filed July 29, 2008).

<sup>24</sup> See *supra* para. 5.

<sup>25</sup> See *Bishop Perry Order*, 21 FCC Rcd at 5326, para. 23.

<sup>26</sup> 47 C.F.R. § 54.507(c).

<sup>27</sup> *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

<sup>28</sup> See *id.*; 47 U.S.C. § 254(h).

<sup>29</sup> *Bishop Perry Order*, 21 FCC Rcd at 5320, para. 9.

<sup>30</sup> We estimate that the requests for review granted in this order involve applications for approximately \$3 million in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g.,

grant and remand the underlying applications listed in the appendix to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.<sup>31</sup> We remind USAC of its obligation to independently determine 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. To ensure that these applications are resolved expeditiously, we direct USAC to complete its review of the underlying 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 the release date of this order.<sup>32</sup>

11. Finally, we emphasize that the Commission is 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 requests for review listed in the appendix, this action does not affect 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 the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains 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. The Commission remains 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

12. 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 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the requests for waiver of 47 C.F.R. §54.507(c) filed by the petitioners as listed in the appendix ARE GRANTED and REMANDED to USAC for further consideration consistent with this order.

13. 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 sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c) IS WAIVED to the extent provided herein.

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Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (Aug. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the universal service fund as a whole.

<sup>31</sup> 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.

<sup>32</sup> In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

14. 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 sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Universal Service Administrative Company 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 the release date of this order.

15. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division,  
Wireline Competition Bureau



## APPENDIX

Applicant Name	Application Number	Funding Year	Date Filed
Acorn Public Library District Oak Forest, IL	637819	2008	June 26, 2008
Antietam School District Reading, PA	637802, 627803, 637804, 637805, 637806	2008	July 7, 2008
Benicia Unified School Dist. Benecia, CA	637478	2008	July 3, 2008
Bloom-Vernon Local School Dist. South Webster, OH	637186, 637211, 637222, 627224, 637227	2008	Feb. 21, 2008
Bridgewater Grammar School Bridgewater, ME	637207	2008	Jan. 15, 2008
Carroll County Public Schools Westminster, MD	637394	2008	July 21, 2008
Cassia Joint School Dist. 151 Burley, ID	594824	2008	June 4, 2008
Center Consolidated School Dist. Center, CO	636455	2008	June 16, 2008
Centerville Public Schools a/k/a Sand Coulee School Dist. 5 & C Sand Coulee, MT	637668	2008	Feb. 14, 2008
Central High School Salem, WI	587291	2007	Aug. 28, 2007
Chabad of Myrtle Beach Myrtle Beach, SC	587260	2007	Sept. 13, 2007
Chittenden Central Supervisory Union Essex Junction, VT	638694	2008	May 19, 2008
Crescent Iroquois CUSD 249 Crescent City, IL	637199	2008	June 2, 2008
Davis Joint Unified School Dist. Davis, CA	587275	2007	Oct. 24, 2007
Delhi Charter School Delhi, LA	586719	2007	Sept. 4, 2007
Dothan City Schools Dothan, AL	547124	2006	Apr. 2, 2007
Edgar School Dist. Edgar, WI	586686, 586687	2007	Aug. 15, 2007
Edmond Independent School Dist. 12 Edmond, OK	553420	2007	May 30, 2008
Elizabeth Public Schools Elizabeth, NJ	575148	2007	Aug. 24, 2007
Fall Mountain Regional School Dist. Langdon, NH	587285, 587287	2007	Aug. 8, 2007
Farragut Community Schools Farragut, IA	636003	2008	June 24, 2008
Father Yermo Schools El Paso, TX	587418	2007	Aug. 28, 2007
Father Yermo Schools El Paso, TX	587419	2007	Aug. 20, 2007

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Fenton Area Public Schools Fenton, MI	637185	2008	July 3, 2008
First City Libraries Ketchikan, AK	637319	2008	July 7, 2008
Fosston Public School Fosston, MN	637403	2008	May 19, 2008
Franklin County School Dist. Apalachicola, FL	637398	2008	Feb. 19, 2008
Fredericksburg Community School Dist. Fredericksburg, IA	614351	2008	June 11, 2008
Gallatin County School System Warsaw, KY	587280	2007	July 17, 2007
Garden Valley School District Garden Valley, ID	637621	2008	July 25, 2008
Gill-Montague Regional School Dist. Turners Falls, MA	637194	2008	Feb. 11, 2008
Glenpool Public Schools Glenpool, OK	602365	2008	Mar. 24, 2008
Greater Canonsburg Public Library Canonsburg, PA	587543, 587548	2007	Aug. 8, 2007
Holy Guardian Angels Regional School Reading, PA	637328	2008	Feb. 12, 2008
Holy Rosary Catholic School Detroit Lakes, MN	637826	2008	Feb. 25, 2008
House Memorial Library Pender, NE	637986	2008	Apr. 21, 2008
Joe Barnhart Bee County Library Beeville, TX	637281, 637306	2008	July 17, 2008
Kalida Local School Kalida, OH	586608	2007	Dec. 28, 2007
Keene Memorial Library Fremont, NE	588095	2007	Aug. 3, 2007
Kelso School Dist. #458 Kelso, WA	637584	2008	Mar. 10, 2008
Ketchikan Public Library Ketchikan, AK	637309	2008	June 20, 2008
Lake Blackshear Regional Library System Americus, GA	637575	2008	July 23, 2008
Latrobe Elementary School Dist. Shingle Springs, CA	587635	2007	Aug. 20, 2007
Lead Hill School Dist. 4 Lead Hill, AR	637193, 637201, 637206, 637311	2008	Feb. 25, 2008
Magnet Cove School Dist. Malvern, AR	562156	2007	July 31, 2007
Maimonides School Brookline, MA	637391, 637395, 637419	2008	Feb. 16, 2008
Maine School Administrative Dist. #1 Presque Isle, ME	637196	2008	Jan. 15, 2008
Mason County Central School Dist. Scottville, MI	392522	2004	Sept. 29, 2004

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Metropolis Public Library Metropolis, IL	637661	2008	May 22, 2008
Mill Creek Valley Schools Alma, KS	586944	2007	Oct. 22, 2007
Minford Local Schools Minford, OH	637392	2008	June 11, 2008
Mount Olive Township School Dist. Budd Lake, NJ <sup>+</sup>	562011	2007	Sept. 24, 2007
Mount Olive Township School Dist. Budd Lake, NJ <sup>+</sup>	562248	2007	Sept. 24, 2007
Nucla Public Library Nucla, CO	580051	2007	Aug. 1, 2007
Palacios Independent School Dist. Palacios, TX	637233	2008	June 13, 2008
Pen Argyl Area School Dist. Pen Argyl, PA	637663	2008	May 6, 2008
Pope John XXIII Jr./Sr. High School Elgin, NE	626852	2008	July 24, 2008
Powell County Public Library Stanton, KY	637464	2008	June 11, 2008
Priddy Independent School Dist. Priddy, TX	458864	2005	Dec. 1, 2005
Queen Anne's County Public Schools Centreville, MD	637599	2008	Mar. 31, 2008
Sacred Heart School Osage, IA	634793 <sup>#</sup>	2008	Feb. 27, 2008
Sacred Heart School Toledo, OH	587278	2007	Aug. 2, 2007
St. Charles Community Schools St. Charles, MI	637241	2008	Mar. 17, 2008
St. Mary's Springs High School Fond du Lac, WI	637557	2008	Apr. 30, 2008
St. Peter Catholic School Wichita, KS	621462	2008	June 20, 2008
Shirley Public School Dist. Shirley, AR	585025	2007	Aug. 15, 2007
Snelling-Merced Falls School Merced, CA	637204	2008	Feb. 20, 2008
South St. Landry Community Library Sunset, LA	587249	2007	July 21, 2008
Stanislaus County Library Modesto, CA	584393	2007	Aug. 23, 2007
Stanislaus County Library Modesto, CA	608940	2008	May 19, 2008
Sterling Schools Sterling, IL	584468	2007	Oct. 22, 2007

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Summit Academy Akron, OH	637660	2008	July 10, 2008
Taylorville Public Library Taylorville, IL	623074	2008	July 24, 2008
Texas Preparatory School San Marcos, TX	587577	2007	Aug. 21, 2007
Waterford Township Free Public Library Atco, NJ	609504	2008	July 9, 2008
Watertown-Mayer Public Schools Watertown, MN	618604	2008	Jan. 11, 2008
Wisconsin Center for the Blind & Visually Impaired Janesville, WI	634317, 634827, 635708, 635488	2008	July 29, 2008
Wounded Knee School Dist. Manderson, SD	538432	2006	Oct. 27, 2006

<sup>+</sup> The applicant filed separate requests for review for the listed applications on the same date.

<sup>#</sup> USAC appears to also identify this application as Application No. 637707.