

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of the
Decisions of the
Universal Service Administrator by
Approach Learning and Assessment Center
Santa Ana, CA, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-140957, et al.
CC Docket No. 02-6

ORDER

Adopted: March 23, 2007

Released: March 23, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address 14 appeals of decisions by the Universal Service Administrative Company (USAC) concerning applications for discounts under the schools and libraries universal service support mechanism. All of the decisions at issue involve the denial of funding on the ground that the underlying applications violated the Commission's competitive bidding rules. As discussed below, in 11 instances, the record demonstrates that the Petitioners did not violate the competitive bidding requirements during the bidding processes. Accordingly, we grant these appeals. In one instance, we find that good cause exists to grant a limited waiver of the Commission's competitive bidding rules. In another instance, however, we are unable to determine from the record whether the Petitioner violated program rules. Finally, we deny one appeal because the record shows that the Petitioner's competitive bidding process violated program rules. We remand the underlying applications associated with these appeals to USAC for further action consistent with this Order.

2. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendices, and to issue an award or a denial based on a complete review and analysis, no later than 90 days from the release of this Order. In addition, we

1 In this Order, the term "appeals" refers to Requests for Review, Requests for Waiver, and Applications for Review. A list of these appeals is attached as Appendices A-B. 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).

2 See 47 C.F.R. §§ 54.504 (a)-(c).

3 The relief granted in this Order does not apply to the following FRNs associated with SLD Application No. 297762: 764333, 764346, 764341, and 764340. The service provider associated with these FRNs released its claims for payment under these FRNs in a civil settlement with the United States executed December 2004. As such the pending appeals related to these FRNs are moot.

direct USAC to conduct further investigation and analysis prior to denying funding for suspected competitive bidding violations of the type addressed herein, and to provide applicants with an opportunity to demonstrate that they did not violate the Commission's competitive bidding rules. In particular, during the initial and selective review processes, we direct USAC to be more specific when making document requests and to explain the consequences of not providing the requested documentation. We emphasize that our actions taken in this Order should have minimal effect on the overall federal Universal Service Fund (USF or the Fund), because the monies needed to fund these appeals have already been collected and held in reserve.<sup>4</sup>

## II. BACKGROUND

3. Under the schools and libraries universal service support mechanism, commonly referred to as 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.<sup>5</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support.<sup>6</sup>

4. In accordance with the Commission's rules, applicants submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.<sup>7</sup> The applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids for E-rate eligible services.<sup>8</sup> The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a Request for Proposal (RFP) available providing detail about the requested services.<sup>9</sup> The RFP must be available to all potential bidders for the duration of the bidding process.<sup>10</sup>

5. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.<sup>11</sup> The applicant must then submit a completed FCC Form 471 to notify USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be

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<sup>4</sup> We estimate that the appeals granted in this Order involve applications for approximately \$8.9 million in funding for Funding Years 1999-2005. 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, dated Jan. 31, 2007.

<sup>5</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>6</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>7</sup> 47 C.F.R. § 54.504(b).

<sup>8</sup> *Id.* *See also* Federal-State Board on Universal Service, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, at 9077-80, paras. 572-579 (1997) (*Universal Service Order*) (describing sequence of designing detailed technology plan and subsequently submitting detailed description of services sought.)

<sup>9</sup> *See, e.g.*, Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (FCC Form 470).

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 54.504(b)(4).

given for eligible services.<sup>12</sup> To demonstrate compliance with the competitive bidding requirements, the applicant must, in connection with each funding request, cite an FCC Form 470 seeking the same category of service later contracted for and reflected in the FCC Form 471.<sup>13</sup>

6. As noted above, the FCC Form 470 describes the applicant's planned service requirements, as well as other information regarding the applicant and its competitive bidding process that may be relevant to the preparation of bids.<sup>14</sup> Applicants are also required, in Item 6 of the FCC Form 470, to name a person whom prospective service providers may contact for additional information about the application (known as the "Item 6 contact person").<sup>15</sup> In addition, in Item 11 of the FCC Form 470, applicants may, at their option, name another contact person who can provide additional technical details and other information about the applicant's requested services to vendors seeking to bid (known as the "Item 11 contact person").<sup>16</sup> This may, but need not be, the same person listed as the Item 6 contact person for the entire application.

7. In the *MasterMind Order*, the Commission observed that the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested.<sup>17</sup> For this reason, the Commission found that when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process.<sup>18</sup> Thus, the Commission concluded that an applicant would be in violation of its competitive bidding rules "when a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder."<sup>19</sup> The Bureau has determined that this reasoning applies to contacts named in Item 11 of the FCC Form 470 as well as to contacts named in Item 6.<sup>20</sup>

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<sup>12</sup> 47 C.F.R. § 54.504(c).

<sup>13</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 2002) at 19 (FCC Form 471 Instructions). Generally, there are three categories of service for which an applicant may request services on the FCC Form 470: telecommunications services, Internet access, and internal connections. See Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (FCC Form 470 Instructions). The FCC Form 470 must seek funding for the same services later requested in the FCC Form 471. If it does not, the FCC Form 471 will be rejected for violating the Commission's competitive bidding requirements. See 47 C.F.R. §§ 54.504(b)-(c). See, e.g., *Request for Review by Aberdeen School District No. 5, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-327601, CC Docket No. 96-45, 19 FCC Rcd 22901 (2004).

<sup>14</sup> 47 C.F.R. § 54.504(b).

<sup>15</sup> FCC Form 470, Item 6; FCC Form 470 Instructions at 7.

<sup>16</sup> FCC Form 470, Item 11; FCC Form 470 Instructions at 10. Although naming an Item 11 contact person is optional, once the option is exercised, the fairness concerns exist to the same degree as if naming the Item 11 contact person had been mandatory.

<sup>17</sup> *Request for Review by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SPIN-143006149, CC Docket No. 96-45, 16 FCC Rcd 4028, 4033, para. 10 (2000) (*MasterMind Order*).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 4032, para. 9 ("[T]o the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470

### III. DISCUSSION

8. The Bureau has under consideration various appeals filed by parties that have requested funding for discounted services under the E-rate program.<sup>21</sup> Six Petitioners' requests for funding were denied because they were unable to provide their RFPs upon request. An additional eight Petitioners' requests for funding were denied because USAC alleged their FCC Forms 470 contained improper service provider contact information.<sup>22</sup> We consider these groups of appeals separately below.

9. *Submission of RFP.* In five appeals before us, USAC rejected the funding requests of North American Family Institute (NAFI), Calhoun School (Calhoun), North Sacramento School District (North Sacramento), Timber Ridge School, and Bnos Chayil because they did not produce valid RFPs during the FCC Form 471 and initial review process, despite having indicated on their FCC Forms 470 that the RFPs would be available upon request.<sup>23</sup> In a sixth appeal, USAC rejected the funding request of Richland Parish School District (Richland Parish) because it did not produce an RFP as required by Louisiana Public Bid Law.<sup>24</sup>

10. Specifically, in the case of NAFI, based on the facts and circumstances of this specific case, we find that good cause exists to grant a limited waiver of section 54.504(b) of the Commission's rules.<sup>25</sup> According to its FCC Form 470, NAFI was seeking vendor proposals for telecommunications service, Internet access, and internal connections.<sup>26</sup> In its Request for Review, NAFI states that although it indicated on its FCC Form 470 that an RFP would be available upon request, it decided not to produce an RFP document until it received a request for one.<sup>27</sup> NAFI contends that if it did receive a request for its RFP, it could have produced a document listing local telephone numbers, spending per location, and

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were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied.”).

<sup>20</sup> See, e.g., *Request for Review by Consorcio de Escuelas y Bibliotecas de Puerto Rico, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228216, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 13624 (Wireline Comp. Bur. 2002).

<sup>21</sup> See Appendices A-B.

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

<sup>23</sup> See Request for Review by North American Family Institute; Request for Review by Calhoun School; North Sacramento School District; Request for Review by Timber Ridge School; Request for Review by Bnos Chayil.

<sup>24</sup> See Request for Review by Richland Parish School District.

<sup>25</sup> 47 C.F.R. § 54.504(b). See also *Universal Service Order*, 12 FCC Rcd at 9078, para. 575 (discussing requirements to provide sufficient detail in the FCC Form 470). Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule 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*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). 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*, 418 F.2d at 1157. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>26</sup> FCC Form 470, North American Family Institute, posted December 20, 2002.

<sup>27</sup> *Id.*; Request for Review by North American Family Institute.

number of cell phones required within 24 hours.<sup>28</sup> NAFI maintains, however, that it never received a request for a copy of its RFP because most of its schools are in rural areas where there is little competition for local telephone service and few carriers offering cell phone service.<sup>29</sup> NAFI further states that local telephone service for its schools has always been on a tariff basis.<sup>30</sup>

11. We do not believe that NAFI's decision to produce an RFP only after it received a request for one was unreasonable enough to warrant the denial of all funding. In addition, we find no indication in the record that service providers were affected by the applicant's actions. Furthermore, at this time, we find no evidence of waste, fraud or abuse, misuse of funds, of a failure to adhere to core program requirements. We recognize that competitive bidding requirements are necessary to ensure more efficient pricing for telecommunications and information services purchased by schools and libraries, by minimizing the amount of support needed. In this case, however, rigid adherence to the rule does not further the purposes of the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries. We therefore grant a limited waiver of section 54.504(b) of the Commission's rules and grant NAFI's Request for Review. Accordingly, we remand the underlying application to USAC for further processing.

12. In the case of Calhoun, USAC determined that the RFP provided by Calhoun during the selective review process was invalid based on the fact that it listed the funding request numbers (FRNs) associated with each of Calhoun's service requests.<sup>31</sup> Specifically, USAC found that the presence of the FRNs on the RFP indicated that the RFP was not in place before Calhoun filed its FCC Form 471.<sup>32</sup> In its Request for Review, Calhoun argues that its original RFP did not include a list of FRNs and that the FRNs were added to the original RFP after Calhoun filed its FCC Form 471.<sup>33</sup> Calhoun states that it was not aware that adding the FRN column to the original RFP would make the original RFP invalid.<sup>34</sup> After reviewing the record, we find that Calhoun submitted a complete FCC Form 470 and posted the form on USAC's website for 28 days before entering into contracts with the selected service providers.<sup>35</sup> We also find that Calhoun had an RFP available for review.<sup>36</sup> In addition, at this time, we find no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. We therefore grant Calhoun's Request for Review and remand its application to USAC for further processing.

13. USAC also denied the funding requests of North Sacramento, Timber Ridge, and Bnos Chayil because each Petitioner failed to provide USAC with a valid RFP during the review process.

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<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Request for Review by Calhoun School.

<sup>32</sup> *Id.* After an applicant has filed an FCC Form 471, USAC assigns an FRN to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services. See USAC website, Service Providers, Step 6: Receive Funding Commitment Decision Letter, <http://www.universalservice.org/sl/providers/step06/> (retrieved Mar. 8, 2007).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See FCC Form 470, Calhoun School, posted October 11, 2002.

<sup>36</sup> *Id.*

Petitioners state that they misunderstood USAC's request for information during the review process and, as a result, provided the wrong document or incorrect information.<sup>37</sup> The record shows that an RFP was available for service providers to review when these Petitioners posted their FCC Forms 470 requesting bids for the services at issue.<sup>38</sup> Specifically, we find that North Sacramento prepared its RFP in December 1999, when it posted its FCC Form 470 for telecommunications and Internet access services.<sup>39</sup> In addition, the record shows that Timber Ridge not only had an RFP, but received two proposals in response to its RFP seeking bids for Internet access and internal connection services.<sup>40</sup> The record also shows that Bnos Chayil received one bid in response to its RFP requesting internal connections for the period between July 1, 2005 and June 30, 2006.<sup>41</sup> Because RFPs were indeed available for review and it appears that North Sacramento, Timber Ridge, and Bnos Chayil otherwise conducted fair competitive bidding processes, we grant their Requests for Review and remand their applications to USAC for further processing.

14. Lastly, we grant Richland Parish's Request for Review, consistent with Bureau precedent.<sup>42</sup> While USAC did not find Richland Parish to be in violation of the Commission's rules, USAC determined that Richland Parish violated Louisiana Public Bid Law when it did not use the RFP procedure and instead provided the description of the services it was seeking on its FCC Form 470.<sup>43</sup> Consistent with *Bienville Parish*, we find that Richland Parish was not in violation of Louisiana Public Bid Law and, thus, were in compliance with state and local competitive bid requirements.<sup>44</sup> We therefore

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<sup>37</sup> See Request for Review by North Sacramento School District at 1-2 (stating that North Sacramento misunderstood USAC's request for a copy of its RFP for the services at issue and provided a copy of its five-year service contract instead); Request for Review by Timber Ridge at 2 (stating that there was miscommunication between USAC and Timber Ridge regarding the document that needed to be provided); Request for Review by Bnos Chayil at 1 (stating that it mistakenly informed USAC that it did not have an RFP when it had one).

<sup>38</sup> See Request for Review by North Sacramento School District at 2; Request for Review by Timber Ridge at Attachment 1; Request for Review by Bnos Chayil at Attachment 1.

<sup>39</sup> In January 2000, North Sacramento signed a five-year contract with Pacific Bell (now AT&T) to provide the requested services. See Request for Review by North Sacramento School District at 2. Pacific Bell was the only service provider to respond to North Sacramento's RFP. During the Funding Year 2004 selective review process, USAC directed North Sacramento to provide a copy of its RFP for the services at issue. North Sacramento misunderstood the request and provided a copy of the five-year service contract instead. *Id.* On appeal, USAC recognized that North Sacramento did provide the correct document (the RFP) during the appeal process, but nevertheless denied North Sacramento's funding request because "program rules do not permit [USAC] to accept new information on appeal except where an applicant was not given an opportunity to provide the information or an error was made by [USAC]." *Id.*

<sup>40</sup> See Request for Review by Timber Ridge at Attachment 1. Timber Ridge provides a copy of its RFP as an attachment to its Request for Review.

<sup>41</sup> See Request for Review by Bnos Chayil at Attachment 1. Bnos Chayil provides a copy of its RFP as an attachment to its Request for Review.

<sup>42</sup> *Request for Review of the Decision of the Universal Service Administrator by Bienville Parish School Board, et al.*, File No. SLD-288199, *et al.*, Order, 21 FCC Rcd 1234 (Wireline Comp. Bur. 2006) (*Bienville Parish*).

<sup>43</sup> Request for Review by Richland Parish School District at 16. Under E-rate program rules, the Commission's competitive bid requirements apply in addition to state and local competitive bid requirements. See 47 C.F.R. § 54.504(a).

<sup>44</sup> *Bienville Parish*, 21 FCC Rcd at 1239, para. 6. In this order, the Bureau granted the requests for review after deferring to an opinion letter drafted by the Louisiana Attorney General that found that the petitioners were in

grant Richland Parish's Request for Review and remand its application to USAC for further processing. In remanding the foregoing applications to USAC, we make no finding as to the ultimate eligibility of the requested services.

15. *Service Provider Contact Information on the FCC Form 470.* USAC denied funding for eight Petitioners after finding that their respective FCC Forms 470 contained improper service provider contact information.<sup>45</sup> As discussed above, the Commission has determined that a competitive bidding violation occurs when a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder.<sup>46</sup> After reviewing the underlying record for each appeal, we find that six Petitioners demonstrated that they did not violate the Commission's competitive bidding rules.<sup>47</sup> Accordingly, we grant these Petitioners' Requests for Review and remand the applications identified below to USAC for further processing. For one Petitioner, the record is inconclusive as to whether a competitive bidding violation occurred.<sup>48</sup> We therefore remand this matter to USAC for further inquiry. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the requested services. Lastly, for another Petitioner, the record reveals that the Petitioner's FCC Form 470 contained improper service provider contact information.<sup>49</sup> We therefore deny this Request for Review.

16. First, for six of the eight Petitioners—Approach Learning and Assessment Center (Approach Learning), CRW Consultants, LLC (CRW), Harrisonburg City School Board (Harrisonburg), Inter-Tel NetSolutions, Inc., Inter-Tel Technologies, Inc., and Olympic Peninsula Consultants (Olympic Peninsula)—Petitioners generally state that the establishing FCC Forms 470 contained the wrong contact information or that the contacts named on the form were not affiliated at any time with a service provider participating in their respective competitive bidding processes.<sup>50</sup> The Petitioners provide correspondence

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compliance with state and local competitive bid requirements. *Id.* The same issues in *Bienville Parish* are at issue in the instant matter.

<sup>45</sup> See Appendix B. Two Petitioners, Inter-Tel NetSolutions, Inc. and Inter-Tel Technologies, Inc. were selected by Approach Learning to provide eligible E-rate services.

<sup>46</sup> *MasterMind Order*, 16 FCC Rcd at 4032, para. 9 (“to the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470 were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied.”).

<sup>47</sup> See Request for Review by Approach Learning, Request for Review by CRW, Request for Review by Harrisonburg, Request for Review by Inter-Tel NetSolutions, Inc., Request for Review by Inter-Tel Technologies, Inc., and Request for Review by Olympic Peninsula.

<sup>48</sup> See Request for Review by Promised Land.

<sup>49</sup> See Request for Review by Studio School.

<sup>50</sup> See Request for Review by Approach Learning at 3 (stating that the named contact person on the FCC Form 470 was not an employee of the selected service provider or any other service provider); Request for Review by Inter-Tel Technologies, Inc. at 2 (stating that the named contact person is not now, and never has been, a consultant to the selected service provider); Request for Review by Inter-Tel NetSolutions, Inc. at 2-3 (stating that the named contact person was not an Inter-Tel employee); Request for Review by CRW Consulting, LLC at 2 (stating that the named contact person on the FCC Form 470 was not affiliated with a service provider participating in the competitive bidding process); Request for Review by Olympic Peninsula Consultants at 2 (stating that the FCC Form 470 contained the wrong contact information); Request for Review by Harrisonburg City School Board at 2 (stating that its contact information with the USAC was incorrect).

from the service providers stating that the named contacts were not, and never have been, affiliated with the service provider.<sup>51</sup> Approach Learning, Harrisonburg, and Olympic Peninsula also state that the service providers submitted an FCC Form 498 to correct their contact information on file with USAC.<sup>52</sup>

17. After reviewing the underlying records of these six Petitioners, we find sufficient evidence demonstrating that there was no improper vendor involvement in their respective competitive bidding processes.<sup>53</sup> In addition, at this time, we find no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. We therefore conclude that rejecting the applications at issue on the ground that the FCC Forms 470 contained improper service provider contact information is not warranted in these instances.<sup>54</sup> Accordingly, we grant Petitioners' Requests for Review and remand the applications identified below to USAC for further processing.<sup>55</sup> In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the requested services. We direct USAC to conduct further investigation and analysis prior to denying funding for suspected competitive bidding violations of the type addressed herein, and to provide applicants with an opportunity to demonstrate that they did not violate the Commission's competitive bidding rules. In particular, during the initial and selective review processes, we direct USAC to be more specific when making document requests and to explain the consequences of not providing the requested documentation.

18. With regard to Promised Land Christian Academy (Promised Land), the record shows that there may be a connection between the contact person listed on its FCC Form 470 and the selected service provider, EnVisionary Technology (EnVisionary).<sup>56</sup> Although the e-mail address provided in Block 1,

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<sup>51</sup> See, e.g., Letter from Robert Morrow, on behalf of Approach Learning and Assessment Center, to Federal Communications Commission, dated June 20, 2003, at Exhibits A, B, and C; Letter from MasterMind Internet Services, to Christopher Webber, CRW Consulting, LLC, dated Sept. 12, 2000 (confirming that Christopher Webber's termination of employment was effective on September 5, 2000, which was two years before the commencement of the competitive bidding process at issue); Letter from Capacity Provisioning, Inc., dated March 1, 2003 (confirming that Jim Bennett of Olympic Peninsula Consultants has never been employed, associated, contracted with or performed any work for or with Capacity Provisioning, Inc.); Request for Review by Harrisonburg City School Board at Exhibit F.

<sup>52</sup> See Request for Review by Approach Learning at 2; Request for Review by Harrisonburg City School Board at Exhibit F; Request for Review by Olympic Peninsula Consultants at 3. According to CRW, the service provider, MasterMind Internet Services, Inc., was directed by USAC to submit an FCC Form 498 to update its contact information. See Request for Review by CRW Consulting, Inc. at 2.

<sup>53</sup> *Id.*

<sup>54</sup> See *MasterMind Order*, 16 FCC Rcd at 4032, para. 9.

<sup>55</sup> The following applications are remanded to USAC for further consideration: Olympic Peninsula Consultants, Application Number 291855; Approach Learning and Assessment Center, Application Numbers 140957, 256403, 297762; CRW Consulting, LLC, Application Numbers 306785, 303203, 307124, 297420, 306762; Inter-Tel Technologies, Inc., Application Numbers 201781, 256403; Inter-Tel NetSolutions, Inc., Application Number 140957; and Harrisonburg City School Board, Application Numbers 348924, 456043, and 400109.

<sup>56</sup> See FCC Form 470, Promised Land Christian Academy, posted December 20, 2001. In the contact information section of Promised Land's FCC Form 470, Promise Land provides the e-mail address of slcerate@yahoo.com and names Angela Williams as the contact person. The mailing address provided for Angela Williams is 204 Forest Hills Drive, #122, Garner, NC. The same e-mail address is listed in the contact information section of an FCC Form 471, filed by Faith Assembly Christian Academy, but that form names Valeria Rich as the contact person. The FCC Form 470 that is referenced by all funding requests on the Faith Assembly Form 471 names Valeria Rich as the contact person. The mailing address given for Valeria Rich on the Form 470, 114 Palmer Drive, Clayton, NC, is the same address listed for EnVisionary Technology on the North Carolina Department of the Secretary of State



Item 6e of Promise Land's FCC Form 470 appears to be associated with EnVisionary, we are unable to determine from the underlying record whether Promised Land's contact person has ever been affiliated with EnVisionary. We therefore remand this matter to USAC for further inquiry into whether the named contact person on Promised Land's FCC Form 470 has ever been employed by, or otherwise affiliated with, EnVisionary. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the requested services.

19. Lastly, with regard to the remaining Petitioner, Children's Studio School-Public Charter School (Studio School), our review of the record reveals that there is a connection between the contact person listed on the Form 470 and the selected service provider, Connectivity+, Inc. (Connectivity). We therefore conclude that USAC correctly denied Studio School's request for support. The record shows that Gail L. Hawkins-Shirar is listed as the contact person on Item 11 of Studio School's FCC Form 470.<sup>57</sup> The record also shows that Ms. Hawkins-Shirar is the President and CEO of Connectivity and submitted a bid on its behalf to provide the requested telecommunications services,<sup>58</sup> and Connectivity was ultimately awarded the service contract.<sup>59</sup> We believe that the contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested.<sup>60</sup> When an applicant gives that capability to an entity that also participates in the competitive bidding process as a prospective service provider, the applicant impairs its ability to hold a fair and open competitive bidding process. We are deeply concerned about practices that undermine the framework of the competitive bidding process. Service provider participation of the type addressed here may suppress fair and open competitive bidding and ultimately damage the integrity of the program. Because we find that Studio School has not provided sufficient evidence demonstrating that USAC erred in its decision, we deny its Request for Review.

20. Finally, we stress 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.<sup>61</sup> Although we grant several of the appeals addressed here, 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 we find that funds were not

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website. Thus, the deduction can be made that Valeria Rich is associated with EnVisionary Technology and the sclerate@yahoo.com e-mail address is also associated with EnVisionary Technology. *See* FCC Form 471, Faith Assembly Christian Academy, filed January 17, 2002; FCC Form 470, Faith Assembly Christian Academy, posted December 11, 2001.

<sup>57</sup> FCC Form 470, Children's Studio School-Public Charter School, posted November 16, 2000. *See also supra*, paras. 6-7.

<sup>58</sup> *See* Letter from Gail L. Hawkins-Shirar, Connectivity+, Inc., to Mr. Franklin Wassmer, Children's Studio School-Public Charter School, dated January 12, 2001.

<sup>59</sup> *See* Note to File, compiled by Franklin Wassmer, Children's Studio School, dated January 18, 2001.

<sup>60</sup> *See also supra*, paras. 6-7.

<sup>61</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (rel. May 19, 2006).

used properly, we will require USAC to recover such funds through its normal processes.<sup>62</sup> 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

21. ACCORDINGLY, IT IS ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under 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 Review and/or Requests for Waiver filed by Calhoun School, New York, New York, on November 23, 2004; North American Family Institute, Danvers, Massachusetts, on August 24, 2004; North Sacramento School District, Sacramento, California, on December 7, 2005; Harrisonburg City School Board, on June 12, 2006 and July 11, 2006; Inter-Tel NetSolutions, Inc., Palo Alto, on December 15, 2003; Inter-Tel Technologies, Inc., Tempe, Arizona, on September 10, 2003; Timber Ridge School, Winchester, Virginia, on February 5, 2004; Bnos Chayil, Brooklyn, New York, on January 20, 2006; Olympic Peninsula Consultants, Forks, Washington, on March 4, 2003; Approach Learning and Assessment Centers, Santa Ana, California, on December 16, 2003 and August 20, 2004; CRW Consulting, LLC, Tulsa, Oklahoma, on June 13, 2003; and Richland Parish School District, Rayville, Louisiana, on August 23, 2004 and July 7, 2006, ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

22. IT IS FURTHER ORDERED that, 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 authority delegated in 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 47. C.F.R. § 54.504(b) IS WAIVED to the limited extent provided herein.

23. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under 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 Request for Review filed by Promised Land Christian Academy, Kinston, North Carolina, on March 24, 2003, IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

24. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under 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 Request for Review filed by Children's Studio School-Public Charter School, Washington, D.C., on April 19, 2004, IS DENIED.

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<sup>62</sup> We note that, during post-funding review, Inter-Tel NetSolutions, Inc., Inter-Tel Technologies, Inc., and Harrisonburg were subject to funding commitment adjustments by USAC for the reasons discussed above. (Inter-Tel NetSolutions, Inc. and Inter-Tel Technologies, Inc. were the chosen service providers for Approach Learning.) In light of our decision herein, we direct USAC to discontinue recovery actions against Inter-Tel NetSolutions, Inter-Tel Technologies, and Harrisonburg pending completion of its review of Approach Learning and Harrisonburg's applications on remand.

25. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under 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 application listed in the Appendices and ISSUE an award or a denial based on a complete review and analysis no later than 90 days from the release of this Order.

26. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon  
Acting Deputy Chief  
Wireline Competition Bureau

**Appendix A:**  
**Request for Proposal Not in Place**

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Type of Appeal</b>
Calhoun School New York, New York	369767	2003	Req. for Rev.
North American Family Institute Danvers, Massachusetts	383810, 383811, 383813	2003	Req. for Rev.
North Sacramento School District Danvers, Massachusetts	395567	2004	Req. for Rev. and/or Waiver
Timber Ridge School Winchester, Virginia	359647 360669 360721	2003	Req. for Rev.
Bnos Chayil Brooklyn, New York	483332 483357 483288 475825	2005	Req. for Rev.
Richland Parish School District Rayville, Louisiana	291953	2002	Req. for Rev.

**Appendix B:**  
**FCC Forms 470 Containing Service Provider Contact Information**

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Type of Appeal</b>
Approach Learning and Assessment Centers Santa Ana, California	140957, 256403, 297762 <sup>63</sup>	1999, 2000, 2002	Req. for Rev.
Children's Studio School- Public Charter School Washington, D.C.	250771	2001	Req. for Rev.
CRW Consulting, LLC Tulsa, Oklahoma	306785, 303203, 307124, 297420, 306762	2002	Req. for Rev. and/or Waiver
Harrisonburg City School Board Harrisonburg, VA	348924 456043 400109	2003 2004 2005	Req. for Rev. and/or Waiver

<sup>63</sup> The relief granted in this Order does not apply to the following FRNs associated with this application: 764333, 764346, 764341, and 764340. The service provider associated with these FRNs released its claims for payment under these FRNs in a civil settlement with the United States executed December 2004. As such the pending appeals related to these FRNs are moot.

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Inter-Tel NetSolutions, Inc. Palo Alto, CA	140957	1999	Req. for Rev.
Inter-Tel Technologies, Inc. Tempe, AZ	201781 256403	2000, 2001	Req. for Rev.
Olympic Peninsula Consultants Forks, Washington	291855	2002	Req. for Rev.
Promised Land Christian Academy Kinston, North Carolina	315153	2002	Req. for Rev.