

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 )
Al-Ishan Academy ) File Nos. SLD-535827, et al.
South Ozone Park, New York, et al. )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: December 29, 2010

Released: December 29, 2010

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

1. In this order, we grant 50 appeals from petitioners seeking to reverse the decisions of the Universal Service Administrative Company (USAC), which found that technology plan rules for the E-rate program had been violated for various funding years. Consistent with the Commission's Brownsville Order, and based on our review of the record, we find that these petitioners have demonstrated that special circumstances exist to justify a waiver of the E-rate program's technology plan rules. We grant these appeals and remand the underlying applications to USAC for further action consistent with this order.

2. The Commission requires an applicant applying for services other than basic telecommunications services to first develop a technology plan. The technology plan must include five

1 The Commission's E-rate program is more formally known as the schools and libraries universal service support program.

2 The requests for waiver and review are listed 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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). Although some petitioners did not explicitly request a waiver, we treat their requests for review as requests for waiver because, in each case, their funding requests were denied because USAC found that technology plan rules had been violated. Several of the petitioners in the appendix are appealing the commitment adjustment letters they received from USAC. When USAC determines that funds were committed or disbursed in error, it will adjust those funding commitments or recover such disbursements to ensure that no funds are used in violation of program rules. See USAC website, Commitment Adjustment (COMAD), http://www.universalservice.org/sl/about/commitments-adjustments.aspx (last visited Dec. 7, 2010).

3 See Request for Review of the Decision of the Universal Service Administrator by Brownsville Independent School District, et al., File Nos. SLD-482620, et al., CC Docket No. 02-6, Order, 22 FCC Red 6045 (2007) (Brownsville Order).

4 See 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv); 54.504(c)(1)(iv)-(v); and 54.508.

5 See appendix.

6 See 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv); 54.504(c)(1)(iv)-(v); and 54.508; Universal Service First Report and Order, 12 FCC Red at 9077-78, para. 573. Technology plans have not been required for "basic (continued....)

elements, including a strategy for using telecommunications and information technology to improve education or library services.<sup>7</sup> To ensure that the technology plan is based on the reasonable needs and resources of the applicant and is consistent with the goals of the E-rate program, the Commission requires technology plans to be approved by either the applicant's state or another USAC-certified technology plan approver.<sup>8</sup> An applicant whose technology plan has not been approved when it files the FCC Form 470 must certify that it understands that its technology plan must be approved prior to the commencement of service.<sup>9</sup>

3. In the *Brownsville Order*, the Commission waived the technology plan rules for petitioners that, among other things, (1) did not develop a technology plan because they sought discounts only for telecommunications or because they believed that a technology plan was not required for what they believed to be basic voice service; (2) failed to show, in response to inquiries by USAC, that they had an approved technology plan in place for the relevant funding year, or that the plan was in the process of being approved; or (3) based their funding applications on approved technology plans from prior years while they updated those plans.<sup>10</sup>

4. We apply the standards of the *Brownsville Order* and waive the technology plan rules for 50 petitioners.<sup>11</sup> First, we waive the technology plan rules and grant the appeals for 44 petitioners that made the same errors as addressed in the *Brownsville Order*.<sup>12</sup> In addition, we also grant waivers to four

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telecommunications" services (e.g., local telephone service, long distance telephone service, and interconnected voice over Internet protocol). See Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2010 (dated Dec. 2, 2009) at 4, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-105A2.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf) (last visited Dec. 14, 2010). In the Commission's *Sixth Report and Order*, however, the Commission amended sections 54.504 and 54.508 of its rules to eliminate the E-rate technology plan requirements for all priority one funding requests. See *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, FCC 10-175 (rel. September 28, 2010) (*Sixth Report and Order*) at paras. 58-65. The amended technology plan rules will be codified at 47 C.F.R. §§ 54.503(c)(2)(iii), 54.504(a)(1)(iv)-(v), and 54.508.

<sup>7</sup> 47 C.F.R. § 54.508(a).

<sup>8</sup> 47 C.F.R. § 54.508(d); *Universal Service First Report and Order*, 12 FCC at 9077-78, para. 574; see also USAC website, Schools and Libraries, Technology Plans, <http://www.universalservice.org/sl/applicants/step02/> (last visited Dec. 28, 2010).

<sup>9</sup> 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), 54.508(c); see also Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15830, para. 56 (2004). An applicant whose technology plan has not been approved when it files the FCC Form 471 must, once again, certify that it understands its technology plans must be approved prior to the commencement of service. 47 C.F.R. § 54.504(c)(1)(iv)-(v).

<sup>10</sup> *Brownsville Order*, 22 FCC Rcd at 6047-6049.

<sup>11</sup> The Commission may waive any provision of its rules on its own motion 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.

<sup>12</sup> See Request for Review of Baldwin County Library Cooperative, Inc; Request for Review of Cleveland Heights – University Heights Public Library; Request for Review of Al-Ishan Academy; Request for Review of Broken Bow Public Schools; Request for Review of Dickson County School District at 1-2 Request for Review of Henderson (continued....)

petitioners that did not create technology plans in accordance with E-rate program rules yet in good faith planned for the implementation of new technology in their schools in accordance with state, local, or other internal requirements.<sup>13</sup> We also grant waivers to two other applicants that were denied funding because it was determined that their technology plans did not include a budget demonstrating other funding sufficient to acquire other services necessary to use the E-rate services they were requesting.<sup>14</sup> In remanding these two applications, however, we instruct USAC to verify that these applicants did indeed have the funds to acquire the services that would be necessary to use the requested E-rate services. As the Commission determined in the *Brownsville Order*, we find that these appellants, even if not technically complying with technology plan rules, have satisfied the policy behind the requirements. We further find that requiring technical compliance with these specific technology plan rules does not further the purposes of section 254(h) or serve the public interest in these instances.<sup>15</sup>

5. Therefore, we find that good cause exists to grant the 50 petitioners' requests for review. We waive the E-rate technology plan requirements for these petitioners and remand the applications listed in the appendix to USAC for further action consistent with this order.

6. 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 review or requests for waiver filed by the petitioners listed in appendix ARE GRANTED and their applications ARE REMANDED to USAC for further action consistent with this order no later than 90 calendar days from the release date of this order.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254

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County Public School District; Request for Review of Lewis-Palmer School District 38; Request for Review of Casa Grande Elementary Schools; Request for Review of Lake Erie Educational Computer Association; Request for Review of St. Barnabas High School; Request for Review of St. Raymond; Request for Review of Municipal Telephone Exchange; Request for Review of Oklahoma School for the Deaf; Request for Review of Greater Homewood Community Corporation, Inc.; Request for Review of South Baltimore Learning Center; Request for Review of TRG Networking, Inc.; Request for Review of Gobles Public Schools; Request for Review of Maricopa County Regional School District; Request for Review of Pharr Memorial Library; Request for Review of American Samoa SEA Department of Education; Request for Review of West Contra Costa Unified School; Request for Review of Trotwood Preparatory and Fitness Academy; Request for Review of Selah School District No. 119; Request for Review of Information Referral Resource Assistance, Inc. (Integrity Communications, Inc.); Request for Review of Nuestros Valores Charter School; Request for Review of Cardinal Hayes High School; Request for Review of Wissahickon Charter School; Request for Review of Westside Holistic Family Services; Request for Review of Bridgeton Public Schools; Request for Review of Wagoner Public Schools; Request for Review of Westside Montessori Center; Request for Review of Columbus Public School; Request for Review of New Direction Academy; Request for Review of Magen David Yeshiva; Request for Review of Good Shepherd School; Request for Review of Kipp Tech Valley Charter School; Request for Review of Yeshiva Torah Vodaath & Mesivta School; Request for Review of Omega Schools; Request for Review of Providence School District; Request for Review of Coleman Independent School District 35; Request for Review of Thomasville City Public School; Request for Review of New Covenant Christian School; Request for Review of Southern California Tribal Chairmen's Libraries Association; and Request for Review of Native Vocational District.

<sup>13</sup> See Request for Review of City of Pembroke Pines Charter School; Request for Review of Arts and Technology Academy; Request for Review of Boys Village Youth and Family Services; Request for Review of Saint Andrew's – Sewanee School.

<sup>14</sup> See Request for Review of Glacier County Library; Request for Review of Lotus Academy. See 54.508(a)(4). This requirement was eliminated by the *Sixth Report and Order*. *Sixth Report and Order*, at para. 68.

<sup>15</sup> *Brownsville Order*, 22 FCC Red at 6049.

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 former sections that sections 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(a)(4) and (c)-(d) of the Commission's rules, 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(a)(4) and (c)-(d), ARE WAIVED to the extent provided herein.

8. 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 pursuant to authority in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL DISCONTINUE its recovery action against the applicants listed in the appendix that are appealing commitment adjustment letters received from USAC.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade  
Deputy Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## APPENDIX

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review Filed</b>
Al-Ishan Academy South Ozone Park, New York	535827	2006	April 19, 2007
Arts and Technology Academy Wilmington, Delaware	429320	2005	September 16, 2008
American Samoa SEA Department of Education Pago Pago, American Samoa	306344	2002	July 27, 2007
Baldwin County Library Cooperative, Inc. (Orange Beach Public Library) Robertsdale, Alabama	528564	2006	March 7, 2007
Boys Village Youth and Family Services Milford, Connecticut	257286	2001	January 4, 2007
Bridgeton Public Schools Bridgeton, New Jersey	580993, 581867, 582031, 581141, 581766, 578428	2007	February 5, 2008
Broken Bow Public Schools Broken Bow, Oklahoma	536258 535775	2006	March 23, 2007
Cardinal Hayes High School (filed by E- rate Central) Bronx, New York	483059	2005	June 19, 2009
Casa Grande Elementary Schools Casa Grande, Arizona	512170, 514172	2006	September 19, 2006
Cleveland Heights – University Heights Public Library Cleveland, Ohio	554693	2007	June 24, 2008
Coleman Independent Public School District 35 Coleman, Oklahoma	483448	2005	December 5, 2008
Columbus Public Schools Columbus, Ohio	376510, 365588	2003	January 25, 2008
Dickson County School District Dickson, Tennessee	527252	2006	March 29, 2007
Glacier County Library Cut Bank, Montana	508699	2006	January 30, 2007
Gobles Public Schools Gobles, Michigan	428693	2004	May 20, 2009
Good Shepherd School Baltimore, Maryland	608408	2008	December 28, 2009
Greater Homewood Community Corporation, Inc. Baltimore, Maryland	193903	2000	March 16, 2005
Henderson County Public School District Hendersonville, North Carolina	512090	2006	March 14, 2007

Information Referral Resource Assistance, Inc. (Integrity Communications, Inc.) McAllen, Texas	249067	2001	December 26, 2007
Kipp Tech Valley Charter School Albany, New York	458735, 457066	2005	September 15, 2009
Lake Erie Educational Computer Association Elyria, Ohio	444012	2005	April 16, 2007
Lewis Palmer School District 38 Monument, Colorado	507363	2006	March 9, 2007
Lotus Academy (Youth Empowerment Services) Philadelphia, Pennsylvania	538116	2006	March 12, 2007
Magen David Yeshiva Brooklyn, NY	431454	2004	January, 12, 2010
Maricopa County Regional School District (filed by FundEd, L.L.C.) Phoenix, Arizona	530784	2006	June 2, 2009
Municipal Telephone Exchange Baltimore, Maryland	323349	2002	November 7, 2008
Native Vocational District Kayenta, Arizona	570160	2007	November 10, 2010
New Covenant Christian School Bronx, New York	523146, 523340	2006	September 10, 2009
New Direction Academy Chicago, Illinois	396775	2004	January 8, 2010
Nuestros Valores Charter School Albuquerque, New Mexico	383807	2003	January 22, 2007
Oklahoma School for the Deaf Sulpher, Oklahoma	410590	2004	March 14, 2009
Omega Schools Phoenix, Arizona	477884	2005	October 3, 2006
City of Pembroke Pines Charter School Pembroke Pines, Florida	449104	2005	May 8, 2007
Pharr Memorial Library Pharr, Texas	485708	2005	October 1, 2008
Providence School District Providence, Rhode Island	492539, 518847, 522263	2006	August 7, 2009
Saint Andrew's – Sewanee School Sewanee, Tennessee	444413	2005	October 23, 2007
Selah School District No. 119 Selah, Washington	507409	2006	March 19, 2007
South Baltimore Learning Center Baltimore, Maryland	125549 192919 245858 314139	1999 2000 2001 2002	February 17, 2005

Southern California Tribal Chairmen's Libraries Association Valley Center, California	476681	2005	September 20, 2010
St. Barnabas High School Bronx, New York	562892	2007	August 26, 2008
St. Raymond School Bronx, New York	514640	2006	August 5, 2007
TRG Networking, Inc. (TRG) (service provider for Greater Homewood and South Baltimore) Towson, Maryland	193903 and 125549 192919 245858 314139	See above	
Thomasville City Public School Thomasville, Georgia	469401	2005	November 16, 2009
Trotwood Preparatory and Fitness Academy Bexley, Ohio	419208, 466681 466699	2004 2005 2005	December 26, 2006
Wagoner Public Schools Wagoner, Oklahoma	504422	2006	May 14, 2007
West Contra Costa Unified School Richmond, California	306939	2002	July 26, 2007
Westside Montessori Center Toledo, Ohio	500106	2006	May 11, 2007
Westside Holistic Family Services Chicago, Illinois	396979	2004	June 3, 2009
Wissahickon Charter School Philadelphia, Pennsylvania	424620	2004	March 27, 2009
Yeshiva Torah Vodaath & Mesivta School Brooklyn, New York	358553	2003	October 27, 2009