

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of Decisions of the
Universal Service Administrator by
Bay Shore Union Free School District
Bay Shore, New York, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-294923, et al.
CC Docket No. 02-6

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 18 appeals of decisions by the Universal Service Administrative Company (USAC) denying applications for discounted services under the schools and libraries universal service support mechanism, also known as the E-rate program. Specifically, USAC denied petitioners funding during Funding Years 2001-2006 on the grounds that their service providers were not registered as telecommunications carriers at the time they filed their applications, or because the service provider identification numbers (SPINs) of the service providers seeking payment did not match the SPINs in the petitioners' funding requests. As explained below, we find that USAC's denials may have been based on inadvertent errors or misunderstandings that, if corrected, would have made the petitioners eligible for funding under the E-rate program. We thus remand the underlying applications associated with these 18 appeals to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendix and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release date of this order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections. Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must file an FCC Form 471

1 A list of the petitioners is included in the Appendix. In this order, we use the term "appeals" to generically refer to requests for review of decisions issued by USAC. 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).

2 47 C.F.R. §§ 54.501-54.503.

to notify USAC of the services that have been ordered, the service provider with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.³

3. Applicants may obtain discounts on Internet access and internal connections irrespective of whether they purchase those offerings from telecommunications or non-telecommunications carriers.⁴ To receive E-rate discounts on “telecommunications services,” however, applicants must purchase those services from entities legally recognized as “telecommunications carriers.”⁵ The term “telecommunications carrier” includes only carriers that offer telecommunications on a common carrier basis.⁶

4. To provide services under the E-rate program (as well as the other universal service support mechanisms), service providers must obtain a Service Provider Identification Number (SPIN) from USAC.⁷ USAC will assign a SPIN to each company that files an FCC Form 498 to register with USAC as a service provider that receives support from the universal service support mechanism.⁸ Service providers may use the FCC Form 498 to designate themselves as telecommunications carriers.⁹ Certain categories of service providers are automatically considered to be eligible telecommunications carriers – including incumbent local exchange carriers (LECs), competitive access providers (CAPs)/competitive LECs, and interexchange carriers (IXCs) – because they are widely acknowledged to be the types of service providers that provide telecommunications services on a common carrier basis.¹⁰ Under program procedures, however, even if a service provider designates itself as a telecommunications carrier on the

³ 47 C.F.R. § 54.504(c).

⁴ See 47 C.F.R. §§ 54.501(a), 54.503 (eligibility for services provided by telecommunications carriers); 54.517(b) (services provided by non-telecommunications carriers).

⁵ See 47 U.S.C. § 254 (h)(1)(B); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9177-78, 9005-23, 9084-90, paras. 589-600 (1997) (*Universal Service First Report and Order*); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5413-14, paras. 163-164 (1997) (*Fourth Reconsideration Order*).

⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9177-78, paras. 785-786; *Fourth Reconsideration Order*, 13 FCC Rcd at 5413-14, paras. 163-164.

⁷ See USAC website, Step 1: Obtain a Service Provider Information Number (Submit FCC Form 498), <http://www.usac.org/sl/providers/step01/> (retrieved Aug 12, 2008).

⁸ *Id.*

⁹ See Universal Service, Service Provider Identification Number and Contact Information Form, OMB 3060-0824 (May 2006) (FCC Form 498); available at http://www.universalservice.org/_res/documents/fund-administration/pdf/form-498-fy2006.pdf (retrieved Aug. 12, 2008).

¹⁰ See *Request for Review of the Decision of the Universal Service Administrator by Virginia State Department of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-163045, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8677, 8678, para. 3 (Wireline Comp. Bur. 2002).

FCC Form 498, the presumption that it provides service on a common carriage basis remains subject to verification by USAC.¹¹

5. In certain situations, applicants and service providers may request that USAC change service providers or the SPIN associated with an applicant's funding request.¹² USAC asks applicants seeking a SPIN change to identify whether the change is a "corrective SPIN change" (when the SPIN listed for a funding request is incorrect) or an "operational SPIN change" (when the applicant chooses to change the service provider associated with a funding request).¹³ USAC procedures require that all SPIN change requests be postmarked or received no later than the last date to submit an invoice.¹⁴

III. DISCUSSION

6. In this order, we grant 18 appeals of decisions by USAC denying funding under the E-rate program. In nine instances, USAC denied funding because it found that the service providers listed on the petitioners' applications were not telecommunications carriers. In nine instances, USAC denied funding because the SPINs of the service providers seeking payment did not match the SPINs in the petitioners' funding requests.

7. Providers of Telecommunications Service Were Not Properly Registered. Nine petitioners – Catasauqua Area School District (Catasauqua), Christian County Public Schools (Christian), Easton Area Public Library and District Center (Easton), Erie 1 BOCES/Western New York Regional Information Center (Erie), Madeira City School District (Madeira), Manitowoc Public School District (Manitowoc), McQuade Children's Services (McQuade), St. Lawrence-Lewis BOCES (St. Lawrence-Lewis), and Sugar creek Local School District (Sugar creek) – were denied E-rate discounts on telecommunications services because USAC found that their service providers were not registered as telecommunications carriers at the time they filed their applications.¹⁵ We grant these appeals because we find that these service providers appear to have been telecommunications carriers at the relevant time, although they had not yet properly registered themselves with USAC as telecommunications carriers.

8. The petitioners explain that their service providers were eligible telecommunications carriers at the time the petitioners filed their applications for E-rate funding, but that the service providers

¹¹ *Id.*; see also USAC website, Step 1: Providers of Telecommunications Services, <http://www.usac.org/sl/providers/step01/providers-telecommunications-services.aspx> (retrieved Aug. 12, 2008).

¹² See USAC website, Service Provider Identification Number (SPIN) Change Guidance, <http://www.universalservice.org/sl/about/changes-corrections/spin-change-guidance.aspx> (retrieved Aug. 12, 2008).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Letter from USAC, Schools and Libraries Division, to Robert Spengler, Catasauqua Area School District (dated Dec. 28, 2005); Letter from USAC, Schools and Libraries Division, to Philip Taylor, Christian County Public Schools (dated Dec. 19, 2006); Letter from USAC, Schools and Libraries Division, to Susan Gardner, Easton Area Public Library (dated Dec. 28, 2005); Letter from USAC, Schools and Libraries Division, to Susan Melancon, Western New York Regional Information Center (Erie 1 BOCES) (dated Apr. 11, 2003); Letter from USAC, Schools and Libraries Division, to Sandy Spencer, Madeira City School District (dated Aug. 29, 2006); Letter from USAC, Schools and Libraries Division, to Kenneth Mischler, Manitowoc Public School District (dated Jan. 13, 2006); Letter from USAC, Schools and Libraries Division, to Lynne Francis, McQuade Children's Services (dated Mar. 21, 2005); Letter from USAC, Schools and Libraries Division, to Jessica Nilsen, Thomas Communications and Technologies, LLC (dated May 27, 2005) (regarding applicant, St. Lawrence-Lewis BOCES); Letter from USAC, Schools and Libraries Division, to Randy Laughlin, Sugar creek Local School District (dated Sept. 19, 2006).

had failed to file the appropriate paperwork on time.¹⁶ Specifically, Catasauqua, Christian, Easton, and McQuade state that, although their providers had initially failed to file the required paperwork that would have identified them as eligible telecommunications carriers in USAC's database, the providers subsequently filed all of the requisite forms.¹⁷ Erie states that the provider it used after its original provider went bankrupt initially lacked a state Certificate of Public Convenience and Necessity authorizing it as a facilities-based common carrier, but that the substitute provider subsequently received such certification.¹⁸ Thus, Erie seeks funding commencing with the date its provider legally became a telecommunications carrier.¹⁹ Madeira and Sugarcreek attach letters from their service provider, Metrocall/Arch Wireless, stating that a miscommunication with USAC resulted in its failure to be listed as an eligible telecommunications carrier in USAC's database.²⁰ Manitowoc submits a certificate from the Public Service Commission of Wisconsin granting the City of Manitowoc, which owns Manitowoc's selected telecommunications provider, Manitowoc Public Utility (MPU), the authority to provide

¹⁶ See Letter from Robert Spengler, Catasauqua Area School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 02-6, at 1 (filed Jan. 17, 2006) (Catasauqua Request for Review); Letter from Philip Taylor, Christian County Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1-2 (filed Jan. 29, 2007) (Christian Request for Review); Letter from Susan Gardner, Easton Area Public Library and District Center, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed Mar. 3, 2006) (Easton Request for Review); Letter from Susan Melancon, Western New York Regional Information Center/Erie 1 BOCES, to Office of the Secretary, Federal Communications Commission at 1-2 (filed May 27, 2003) (Erie Request for Review); Letter from Susan Crabill, Madeira City Schools, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 02-6, at 1 (filed Oct. 26, 2006) (Madeira Request for Review); Letter from Kenneth Mischler, Manitowoc Public School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 02-6, at 1-3 (filed Mar. 10, 2006) (Manitowoc Request for Review); Letter from Lynne Francis, McQuade Children's Services, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed July 11, 2005) (McQuade Request for Review); Letter from Jessica Nilsen, on behalf of St. Lawrence-Lewis BOCES, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed July 26, 2005) (St. Lawrence-Lewis Request for Review); Letter from Steven Shank, Sugarcreek Local School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 02-6, at 1 (filed Nov. 13, 2006) (Sugarcreek Request for Review).

¹⁷ See Catasauqua Request for Review at 1; Christian Request for Review at 1-2; Easton Request for Review at 1; McQuade Request for Review at 1. Catasauqua's service provider submitted its paperwork to USAC approximately nine months after Catasauqua filed its application. See Letter from USAC, Schools and Libraries Division, to Robert Spengler, Catasauqua Area School District (dated Nov. 2, 2005); Letter from Robert Spengler, Catasauqua Area School District, to USAC, Schools and Libraries Division (dated Nov. 10, 2005); FCC Form 471, Catasauqua Area School District (filed Feb. 9, 2005). Christian's service provider submitted its paperwork to USAC approximately eight and a half months after Christian filed its application. See Christian Request for Review at 2; FCC Form 471, Christian County Public Schools (filed Feb. 14, 2006). Easton's service provider submitted its paperwork to USAC approximately ten and a half months after Easton filed its application. See Letter from Susan Gardner, Easton Area Public Library and District Center, to USAC, Schools and Libraries Division, at 1-2 (dated Dec. 8, 2005); FCC Form 471, Easton Area Public Library and District Center (filed Jan. 26, 2005). It is unclear from the record how late McQuade's service provider submitted its paperwork to USAC. See Letter from Lynne Francis, McQuade Children's Services, to USAC, Schools and Libraries Division, at 1 (dated July 5, 2005); FCC Form 471, McQuade Children's Services (filed Jan. 31, 2004).

¹⁸ See Erie Request for Review at 1-2 (attaching a letter from the State of New York Department of Public Service (dated Oct. 15, 2002)).

¹⁹ *Id.* at 2.

²⁰ See Madeira Request for Review at 1; Sugarcreek Request for Review at 1.

telecommunications services.²¹ Lastly, St. Lawrence-Lewis claims that its service provider was listed on USAC's list of eligible telecommunications carriers when it filed its FCC Form 471, but that an unrelated filing submitted to USAC by its provider inadvertently changed the provider's status, and that its provider was working with USAC to correct the mistake.²²

9. Based on the facts and the circumstances of these specific cases and consistent with precedent, we grant the petitioners' appeals. Consistent with the Commission's determination in the *Bishop Perry Order*,²³ we find that using the SPIN of a service provider that inadvertently failed to file or belatedly filed the appropriate paperwork with USAC to demonstrate that it is an eligible telecommunications carrier, where the service provider was in fact an eligible telecommunications carrier at the relevant time, is a clerical, ministerial or procedural error, and, therefore, a complete rejection of an application on that basis is not warranted.²⁴ In this instance, all the petitioners claim that their service providers were eligible telecommunications carriers at the time the petitioners filed their applications for E-rate funding, but that circumstances beyond their control resulted in their service providers failing to file the appropriate paperwork on time. Thus, we conclude that these nine petitioners should not be penalized for administrative oversights involving the SPINs of their telecommunications carriers, which their carriers corrected once alerted to the oversights. Therefore, we grant these appeals and remand the underlying applications to USAC to determine whether the petitioners' applications would have been granted had their service providers been given the chance to cure certain administrative or ministerial errors. We instruct USAC to process the applications if it can verify that the providers used were actually eligible telecommunications carriers during the periods for which the applicants sought E-rate discounts for telecommunications services.

10. SPIN Change Requests. Nine petitioners – Bay Shore Union Free School District (Bay Shore), Euclid City Schools (Euclid), Flour Bluff Independent School District (Flour Bluff), Fort Vancouver Regional Library (Ft. Vancouver), Hampton Township School District (Hampton), Keenesburg School District Re-3J (Keenesburg), New Brunswick School District (New Brunswick), New Hope CC School District (New Hope), and San Diego City Schools (San Diego) – were denied funding because the SPINs of the service providers seeking payment did not match the SPINs in the petitioners' funding requests.²⁵ We grant these appeals because we find that the SPIN mismatches appear to be the result of ministerial errors due to SPIN change requests.²⁶

²¹ The City of Manitowoc was authorized to provide telecommunications services as of August 17, 2000. Manitowoc Request for Review at 3. This authorization was granted in 2000, prior to the funding year in question, Funding Year 2005.

²² St. Lawrence-Lewis Request for Review at 1.

²³ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 026, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (directing USAC to identify and allow applicants to cure errors related to FCC Form 470 and FCC Form 471 filings and to enhance outreach to applicants in order to avoid clerical, ministerial, and procedural errors).

²⁴ *Id.*; *Requests for Review of Decisions of the Universal Service Administrator by Brewster Academy et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 9185, 9187-89, paras. 7-8 (Wireline Comp. Bur. 2007).

²⁵ See Letter from Gary Lamm, Bay Shore Union Free School District, to Office of the Secretary, Federal Communications Commission (filed Jun. 14, 2004) (Bay Shore Request for Review); Letter from Darrell Bartkowski, Euclid City Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 23, 2005) (Euclid Request for Review); Letter from Darrell Earwood, Flour Bluff Independent School District, to Federal Communications Commission, CC Docket Nos. 96-45, 02-6 (filed Jun. 16, 2003) (Flour

11. Specifically, Hampton and New Hope state that their inaccurate SPINs were due to clerical errors and that they failed to submit accurate SPIN change requests by USAC's deadlines.²⁷ Euclid, Ft. Vancouver, and San Diego used service providers whose SPINs changed due to corporate reorganizations.²⁸ Ft. Vancouver explains that it requested a corrective SPIN change, but USAC denied it without explanation.²⁹ Euclid and San Diego explain that they were unaware of any need for a SPIN change until after the SPIN change deadlines.³⁰ Although Hampton, New Hope, Euclid, Ft. Vancouver, and San Diego received service from providers with SPINs different from the SPINs in their approved funding requests, the entities that actually provided service to these five petitioners all appear to have been eligible providers. As the Bureau explained in the *Brewster Academy Order*, inadvertently using an incorrect SPIN for a service provider that is eligible to provide telecommunications services is a clerical, ministerial or procedural error, and, therefore, we find that the complete rejection of these applications is not warranted.³¹ Thus, consistent with the Bureau's determination in the *Brewster Academy Order*, we grant these appeals finding that these five petitioners should not be penalized because reorganizations by their service providers caused the relevant SPINs to change.

12. Additionally, two petitioners, Flour Bluff and New Brunswick, claim that USAC erred in responding to their SPIN change requests.³² Flour Bluff and New Brunswick explain that USAC originally granted the funding requests, which indicated that service would be provided by one service provider.³³ However, Flour Bluff and New Brunswick later chose to gradually switch to a second service

Bluff Request for Review); Letter from Patty Duitman, Fort Vancouver Regional Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed July 18, 2005) (Ft. Vancouver Request for Review); Letter from Lawrence Korchnak, Hampton Township School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 29, 2004) (Hampton Request for Review); Letter from Neil Schaal, Weld County School District Re-3J (a/k/a Keenesburg County School District Re-3J), to Federal Communications Commission, CC Docket No. 02-6 (May 26, 2005) (Keenesburg Request for Review); Letter from Mark Seltzer, New Brunswick School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 2, 2005) (New Brunswick Request for Review); Letter from Diane Vaughan, New Hope CC School District 6, to Federal Communications Commission (filed Feb. 3, 2006) (New Hope Request for Review); Letter from Laura Smith, San Diego City Schools, to Federal Communications Commission (filed Mar. 11, 2003) (San Diego Request for Waiver).

²⁶ See *Bishop Perry Order*, 21 FCC Rcd 5316.

²⁷ See Hampton Request for Review at 2; New Hope Request for Review at 1.

²⁸ See Euclid Request for Review at 1-2; Ft. Vancouver Request for Review at 1-3; San Diego Request for Waiver at 1.

²⁹ See Ft. Vancouver Request for Review at 1-3.

³⁰ See Euclid Request for Review at 1-2; San Diego Request for Waiver at 1.

³¹ See *Brewster Academy Order*, 22 FCC Rcd at 9188-89, para. 8.

³² See New Brunswick Request for Review at 1-3; Flour Bluff Request for Review at 1. When an applicant submits its FCC Form 471 funding request, it usually requests services from multiple service providers. For administrative reasons, USAC requires applicants to list requests concerning each different service provider separately and assigns a different funding request number (FRN) to each separate request. An applicant can also divide the services it requests from a single service provider into multiple FRNs. See *Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806, at 22 (Nov. 2004) (FCC Form 471 Instructions) (Block 5: Discount Funding Request(s)).

³³ See New Brunswick Request for Review at 1-3; Flour Bluff Request for Review at 1.

provider for a majority of the services covered by the funding requests at issue.³⁴ Therefore, both petitioners submitted SPIN change requests asking USAC to allow E-rate support to be provided to their second carriers on the date that their gradual switch began, while continuing to allow E-rate support for the initial providers for service to some of the locations covered.³⁵ Flour Bluff and New Brunswick maintain that there would be a period when both providers, the current and the new service provider, would be providing a portion of the service; thus, requiring two different sets of start and stop dates.³⁶ Therefore, Flour Bluff and New Brunswick state that USAC should have created a second FRN for the new providers rather than amending the original FRNs.³⁷ In each case, the petitioner states that USAC treated the service provider changes as complete on the date the second provider began providing service, thereby prematurely terminating the rights of the original service provider to receive support during the transition period, and prior to the date the petitioner had indicated for termination in its SPIN change request.³⁸ Thus, in these instances, we find that USAC misinterpreted the SPIN change requests as replacing one service provider with another, even though the service termination dates on the SPIN change requests indicated that the original service providers were to continue to provide some service after the second providers had begun to provide service. Accordingly, we grant these appeals and direct USAC to split the petitioners' FRNs into separate FRNs to reflect the overlapping service dates of the service providers and to approve payments to the service providers that did not receive payment for approved E-rate support.

13. Lastly, Bay Shore and Keenesburg were both denied support that USAC had previously granted them for Internet access.³⁹ In both cases, the applicants paid their Internet access providers under the billed entity applicant reimbursement (BEAR) option, but then those Internet access providers went out of business before the applicants could secure reimbursements from USAC.⁴⁰ Therefore, Bay Shore and Keenesburg took advantage of the Good Samaritan solution to receive reimbursement from USAC and they selected Good Samaritan service providers to secure their reimbursements for them.⁴¹ Under

³⁴ See New Brunswick Request for Review at 1-3; Flour Bluff Request for Review at 1.

³⁵ See New Brunswick Request for Review at 1-3; Flour Bluff Request for Review at 1.

³⁶ See New Brunswick Request for Review at 1-3; Flour Bluff Request for Review at 1.

³⁷ See New Brunswick Request for Review at 1-3; Flour Bluff Request for Review at 1.

³⁸ See New Brunswick Request for Review at 1-3; Flour Bluff Request for Review at 1.

³⁹ See Letter from USAC, Schools and Libraries Division, to Bob Tranco, Bay Shore Union Free School District (dated May 21, 2002); Letter from USAC, Schools and Libraries Division, to Neil Schaal, Keenesburg School District Re-3J (dated Dec. 16, 2003).

⁴⁰ See Bay Shore Request for Review at 1; Letter from Neil Schaal, Keenesburg School District, to USAC, Schools and Libraries Division (dated Mar. 10, 2004).

⁴¹ Some applicants pay the service provider the undiscounted price of services for which they have been granted discounts and are then reimbursed by the service provider when it receives the discount payment from USAC as part of the BEAR process. See USAC website, Invoice USAC, <http://www.usac.org/sl/applicants/step11/default.aspx> (retrieved Aug. 12, 2008). In some instances, however, the service provider goes out of business before reimbursing the applicant, so the applicant is permitted to request that a different service provider be designated as a "Good Samaritan" to receive the relevant discount rebate from USAC and pass it on to the applicant. See USAC website, "Good Samaritan" Solution for Certain Applicants, <http://www.usac.org/sl/about/changes-corrections/good-samaritan.aspx> (retrieved Aug. 12, 2008) (Good Samaritan Solution); Bay Shore Request for Review at 1-2; Letter from Neil Schaal, Keenesburg School District, to USAC, Schools and Libraries Division (dated Feb. 11, 2005) (Keenesburg Feb. 2005 Letter); Letter from USAC, Schools and Libraries Division, to Neil Schaal, Keenesburg School District (dated April 1, 2005) (Keenesburg Apr. 2005 Letter).

USAC's procedures, an applicant must select a Good Samaritan that is a telecommunications service provider, regardless of whether the underlying service is telecommunications or Internet access.⁴² Bay Shore and Keenesburg, however, selected Good Samaritan providers that were Internet access providers rather than telecommunications service providers.⁴³ We find that it was reasonable for Bay Shore and Keenesburg to believe that they could select Internet service providers to replace their original Internet service providers for the Good Samaritan process. We thus grant Bay Shore's and Keenesburg's appeals and direct USAC to assist both petitioners in selecting new Good Samaritan providers to process their reimbursements.⁴⁴

14. Based on the foregoing, we find that the complete rejection of these 18 applications is not warranted. We note there is no evidence of waste, fraud, or abuse, misuse of funds, or a failure to adhere to substantive program requirements. In these cases, the petitioners have demonstrated that rigid compliance with USAC's application procedures would inflict undue hardship on the applicants, which would not further the purposes of section 254(h) or serve the public interest.⁴⁵ We therefore grant these 18 appeals and remand the underlying applications associated with these appeals to USAC for further processing consistent with this order.⁴⁶ Additionally, to the extent necessary, we also waive section 54.504(c) of the Commission's rules, which requires that applications must be complete when filed, to enable these petitioners to correct any SPIN errors on their FCC Forms 471.⁴⁷ To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or denial based on a complete review and analysis no later than 90 calendar days from release of this order.⁴⁸ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.⁴⁹ 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.

⁴² See Good Samaritan Solution.

⁴³ See Bay Shore Request for Review at 1-2; Keenesburg Feb. 2005 Letter; Keenesburg Apr. 2005 Letter.

⁴⁴ We note that USAC now offers assistance to applicants seeking a Good Samaritan provider. See Good Samaritan Solution.

⁴⁵ See 47 U.S.C. § 254(h).

⁴⁶ We estimate that the appeals granted in this order involve approximately \$600,000 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the 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.

⁴⁷ 47 C.F.R. § 54.504(c); see *Brewster Academy Order*, 22 FCC Rcd at 9189, para. 9 (the Bureau found that good cause existed to waive the filing deadline where clerical, ministerial or procedural errors led to using the wrong SPIN, and where correction of the SPINs could only occur after the filing deadline for the FCC Form 471).

⁴⁸ 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.

⁴⁹ 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.

15. 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 appeals addressed herein, 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. 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

16. 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Requests for Review listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

17. 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 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3 of the Commission's rules, that section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c), IS WAIVED to the extent necessary as provided herein.

18. 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC 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 release of this order.

19. 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	Application Number	Funding Year	Date Request for Review Filed
Bay Shore Union Free School District Bay Shore, NY	294923	2002	Jun. 14, 2004
Catasauqua Area School District Catasauqua, PA	440941, 462340	2005	Jan. 17, 2006
Christian County Public Schools Hopkinsville, KY	500648	2006	Jan. 29, 2007
Easton Area Public Library and District Center Easton, PA	452094	2005	Mar. 3, 2006
Erie 1 BOCES (Western New York Regional Information Center) West Seneca, NY	328803	2002	May 27, 2003
Euclid City Schools Euclid, OH	358296	2003	Mar. 23, 2005
Flour Bluff Independent School District Corpus Christi, TX	245039	2001	Jun. 16, 2003
Fort Vancouver Regional Library District Vancouver, WA	336487	2003	July 18, 2005
Hampton Township School District Allison Park, PA	321084	2003	Nov. 29, 2004
Keenesburg County School District Re-3J Keenesburg, CO	373326	2003	May 26, 2005
Madeira City School District Madeira, OH	494107	2006	Oct. 26, 2006
Manitowoc Public School District Manitowoc, WI	447464	2005	Mar. 10, 2006
McQuade Children's Services New Windsor, NY	417582	2004	July 11, 2005
New Brunswick School District New Brunswick, NJ	420048	2004	Nov. 2, 2005
New Hope CC School District 6 Fairfield, IL	404361 444071	2004 2005	Feb. 3, 2006
St. Lawrence-Lewis BOCES Canton, NY	410395	2004	July 26, 2005
San Diego City Unified School District San Diego, CA	227845	2001	Mar. 20, 2008
Sugarcreek Local School District Bellbrook, OH	493974	2006	Nov. 13, 2006