

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver Filed By)	
)	
Utica City School District)	File Nos. SLD-512093, 521504, 523136
Utica, New York)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: August 2, 2006

Released: August 2, 2006

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a Request for Waiver filed by the Utica City School District, Utica, New York (Utica City), seeking waiver of the Funding Year 2006 FCC Form 471 filing window deadline for the schools and libraries universal service support mechanism (also known as the E-rate program).¹ Upon our review of the record, we find that the issue raised here is consistent with those resolved in the Commission's recently released *Bishop Perry Middle School Order*. We therefore remand the applications to the Universal Service Administrative Company (USAC) for further action consistent with the *Bishop Perry Middle School Order*.² To ensure that the applications are resolved expeditiously, we direct USAC to complete its review of each application included in this appeal, and issue an award or a denial based on a complete review and analysis, no later than 60 days from release 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. The E-rate application process generally begins with a technology assessment and a technology plan.³ After developing the technology plan, the applicant must file the FCC Form 470

¹ See Letter from Marilyn Skermont, Superintendent of Schools for Utica City School District, to Federal Communications Commission, dated May 16, 2006 (Request for Waiver).

² *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, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School Order*).

³ 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. § 54.504. Applicants seeking discounts only for telecommunications services do not need to develop a technology plan. See *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 18812, 18816, para. 11 (2001). In August, 2004, the Commission revised its rules concerning technology plans.

to request discounted services such as tariffed telecommunications services, month-to-month Internet access, cellular services, paging services, and any services for which the applicant is seeking a new contract.⁴ The FCC Form 470 must be posted on USAC's schools and libraries division website for at least 28 days.⁵ The applicant must then comply with the Commission's competitive bidding requirements set forth in sections 54.504 and 54.511(a) of the Commission's rules.⁶ The applicant then files the FCC Form 471, after entering into agreements for eligible services.⁷ Section 54.507 of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.⁸ Under the Commission's rules, USAC implements an initial filing period, or filing window, for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁹ Applicants using USAC's online filing system must either complete the certification to FCC Form 471 online or print out the otherwise completed online form and sign and mail it in. Certifications completed via paper must be postmarked by the close of the filing window.¹⁰

3. In the Request for Waiver, Utica City asserted that on February 13 and 15, 2006, it filed three Form 471s for funding year 2006.¹¹ Utica City asserted that the application forms were submitted online and the certifications were filled in online.¹² The E-Rate application process for funding year 2006, however, only allowed the primary contact for E-Rate to use the Personal Identification Number (PIN) for online certification.¹³ The school district employee to whom the PIN was assigned was no longer with the school district and, therefore, Utica City's certification Block 6 and accompanying Item 21 Attachments could not be submitted online; instead, they had to be filled in online and printed for signature by the Superintendent of Schools, who was the new primary contact for E-Rate. Utica City argues that the Form 471s and certifications were printed on February 13 and 15, 2006, and signed by the Superintendent of Schools on February 15, 2006. The signed certifications, however, were not

See Schools and Libraries Fifth Report and Order, 19 FCC Rcd at 15826-30, paras. 51-63. *See Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15826-30, paras. 51-63 (2004) (*Schools and Libraries Fifth Report and Order*).

⁴ If the technology plan has not been approved when the applicant files the Form 470, the applicant must certify that it understands that the technology plan must be approved prior to commencement of service. 47 C.F.R. § 54.504(b)(2)(vii).

⁵ 47 C.F.R. § 54.504(b)(4).

⁶ 47 C.F.R. §§ 54.504, 54.511(a).

⁷ FCC Form 471 allows applicants to request discounts on eligible services, and it contains the discount calculation worksheet and the discount funding request. The FCC Form 471 must be filed each time a school or library orders telecommunications services, Internet access, or internal connections. *See* USAC website, Form 471 Filing Information, www.usac.org/sl/applicants/step07/form471-filing-information.aspx.

⁸ 47 C.F.R. § 54.507(c).

⁹ *Id.*

¹⁰ The deadline for Funding Year 2006 applications was February 16, 2006. *See* SLD website, www.sl.universalservice.org/whatsnew/2005/012005.asp.

¹¹ Request for Waiver at 1.

¹² *Id.*

¹³ Under the old PIN system, the PIN was specific to an individual but not an entity. The individual could change jobs and certify forms for a new Billed Entity, but the PIN was only to be used by that individual, not someone else. Under the new PIN system, the PIN is assigned to a single individual at a single Billed Entity, and only that individual can use that PIN to certify for that Billed Entity.

postmarked until February 17, 2006.¹⁴ As a result, USAC rejected Utica City's Forms 471 because the certifications were postmarked on February 17, 2006, one day after the filing window deadline of February 16, 2006.¹⁵

III. DISCUSSION

4. Based on the facts and circumstances of this case, we find that good cause exists to waive the deadline for filing the FCC Form 471s established pursuant to section 54.507 of the Commission's rules.¹⁶ Utica City claims that staff mistakes and confusion resulted in the late filing of its application forms. We note that the primary jobs of most of the people filling out E-Rate applications include school administrators, technology coordinators, and teachers, as opposed to staff dedicated to pursuing federal grants, especially in small school districts. As the Commission recently held in the *Bishop Perry Middle School Order*, a violation that is procedural, not substantive, may not warrant the complete rejection of schools and libraries applications in certain instances.¹⁷ In this case, the forms were substantially completed online by the deadline; only the signature was missing. Furthermore, Utica City mailed the signature certifications only one day late. Thus, this appeal is similar to the more than one hundred appeals that the Commission granted in the *Bishop Perry Middle School Order* where USAC had denied funding for applications that were filed outside of the FCC Form 471 filing window.¹⁸ Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. In this case, Utica City has demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.¹⁹ We therefore grant the Request for Waiver and remand the applications to USAC for further consideration in accordance with the terms of this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the requested services.

IV. ORDERING CLAUSES

5. ACCORDINGLY, IT IS 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 sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Request for Waiver of 47 C.F.R. §54.504(b) filed by Utica City School District, Utica, New York IS GRANTED and IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

¹⁴Request for Waiver at 1.

¹⁵ The deadline for Funding Year 2006 applications was February 16, 2006. See SLD website, www.sl.universalservice.org/whatsnew/2005/012005.asp. Letter from Universal Service Administrative Company, to Dr. Deborah Y. Bauder, Utica City School District, regarding Form 471 Application Number 512093, dated May 11, 1006. Letter from Universal Service Administrative Company, to Dr. Deborah Y. Bauder, Utica City School District, regarding Form 471 Application Number 521504, dated May 11, 1006. Letter from Universal Service Administrative Company, to Dr. Deborah Y. Bauder, Utica City School District, regarding Form 471 Application Number 523136, dated May 11, 1006.

¹⁶ See 47 C.F.R. § 54.507(c).

¹⁷ *Bishop Perry Middle School Order*, at 8.

¹⁸ *Id.* at paras. 12-16.

¹⁹ See 47 U.S.C. § 254(h).

6. 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, USAC SHALL COMPLETE its review of the remanded applications for Utica City School District, Utica, New York and issue an award or a denial based on a complete review and analysis no later than 60 days from release of this Order.

7. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Deputy Chief
Wireline Competition Bureau