

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Waiver of the Decision of the
Universal Service Administrator by
Douglas-Omaha Technology Commission
Omaha, Nebraska
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-427054
CC Docket No. 02-6

ORDER

Adopted: August 18, 2006

Released: August 18, 2006

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the Request for Waiver filed by the Douglas-Omaha Technology Commission (Douglas-Omaha) seeking waiver of a decision by the Universal Service Administrative Company (USAC) denying Douglas-Omaha discounted services for Funding Year 2004 under the schools and libraries universal service support mechanism (E-rate program). For the reasons set forth below, we grant Douglas-Omaha's Request for Waiver and remand it to USAC for appropriate action consistent with this Order. We also direct USAC to complete its review of this application and issue an award or 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. After an applicant for discounted services under the E-rate program has entered into agreements for eligible services with one or more service providers, it must file an FCC Form 471 with USAC. The FCC Form 471 notifies USAC of the services that have been ordered and supplies an estimate of funds requested for eligible services. USAC then issues a funding commitment decision letter indicating the funding, if any, for which the applicant is approved to receive. After the funding year begins and the applicant begins receiving services at the discounted rate, the applicant submits an FCC Form 486 to USAC. The FCC Form 486 indicates that the service has begun, specifies the service start date and demonstrates that

1 Letter from Victor E. Stannish, Douglas-Omaha Technology Commission, to Federal Communications Commission, filed Dec. 21, 2005 (Request for Waiver). Funding Year 2004 started on July 1, 2004 and ended on June 30, 2005.

2 See 47 C.F.R. §§ 54.501-54.503.

3 See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) (FCC Form 471).

4 47 C.F.R. § 54.504(c).

the applicant has received approval of its technology plan.<sup>5</sup> The timely submission of FCC Form 486 ensures that disbursements for discounts on eligible services are done in a prompt and efficient manner. Because the FCC Form 486 indicates the actual service start date, USAC will only issue disbursements to the service provider for discounts on eligible services after receipt of the form.<sup>6</sup>

3. The deadline for receipt of the FCC Form 486 is a procedural deadline created by USAC. In Funding Year 2004, the FCC Form 486 had to be postmarked no later than 120 days after the date service began or no later than 120 days after the date of the funding commitment decision letter, whichever was later, to receive discounts retroactively to the service start date.<sup>7</sup> For a late FCC Form 486, the start date for discounted services is reset to 120 days before the postmark date.<sup>8</sup> No funding is provided for services rendered prior to the new start date and funding commitments are reduced for the relevant funding request.<sup>9</sup>

4. In Funding Year 2004, Douglas-Omaha sought E-rate program funding for telecommunications service and Internet access for the Omaha Public Library.<sup>10</sup> Douglas-Omaha received its funding commitment decision letter for the requested services on December 3, 2004 and was reminded that the FCC Form 486 was due 120 days later.<sup>11</sup> In March 2005, Douglas-Omaha underwent personnel changes that included the termination of its information officer.<sup>12</sup> A new employee was hired November 7, 2005, and Douglas-Omaha subsequently learned that the filing deadline for the FCC Form 486 was missed.<sup>13</sup> Douglas-Omaha then filed a waiver request with the Commission on December 19, 2005.<sup>14</sup> In its Request for Waiver, Douglas-Omaha notes that the denial of funding will negatively affect library services, including Internet access, for the public and its staff.<sup>15</sup> Douglas-Omaha further notes that the personnel issues that caused the deadline oversight have been corrected.<sup>16</sup>

5. The Commission may waive any provision of its rules on its own motion and for good cause shown.<sup>17</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>18</sup> In addition, the Commission may take into account considerations of hardship, equity, or

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<sup>5</sup> Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (August 2003) at 2 (FCC Form 486 Instructions).

<sup>6</sup> See, e.g., 2003 Form 486 Instructions at 2. See also *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12444, para. 4 (2002) (*CIPA II Order*); 47 C.F.R. § 54.520.

<sup>7</sup> *CIPA II Order*, 17 FCC Rcd at 12445, para. 5; 2003 Form 486 Instructions at 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tracy Svevad, The Douglas-Omaha Technology Commission, dated Dec. 3, 2004 (Funding Commitment Decision Letter).

<sup>11</sup> *Id.*

<sup>12</sup> Request for Waiver at 1.

<sup>13</sup> *Id.*

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 47 C.F.R. §1.3.

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

more effective implementation of overall policy on an individual basis.<sup>19</sup> 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.<sup>20</sup>

### III. DISCUSSION

6. Based on the facts and the circumstances of this specific case, we find that good cause exists to waive the deadline for filing the FCC Form 486 for Douglas-Omaha and remand the underlying applications associated with its appeal to USAC for further action consistent with this Order. Under Bureau precedent, deadlines have been strictly enforced for the E-rate program, including those pertaining to the FCC Form 486.<sup>21</sup> As the Commission recently noted in *Bishop Perry Middle School*, a departure from required filing deadlines may be warranted upon careful review of the Petitioner's case and when doing so will serve the public interest.<sup>22</sup> Douglas-Omaha claims that personnel issues and other unforeseen circumstances resulted in the late filing of its FCC Form 486. Given that the violation at issue is a USAC deadline, not a substantive Commission rule, we find that the complete rejection of this application is not warranted. Notably, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in this case would inflict undue hardship on Douglas-Omaha. In this case, the applicant has demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.<sup>23</sup> We therefore grant Douglas-Omaha's waiver request and remand the application to USAC for further processing consistent with this Order.<sup>24</sup>

7. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of Douglas-Omaha's application and process the application in accordance with this Order no later than 60 calendar days from release of this Order. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines are necessary for the efficient administration of the schools and libraries E-rate program. Although we grant the appeal before us, our action here does not eliminate USAC's deadline for filing the FCC Form 486. We continue to require E-rate applicants to submit complete and accurate information to USAC as part of the application review process.

8. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeal addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules or requirements. Because audits and

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<sup>19</sup> *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).

<sup>20</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>21</sup> *See Requests for Waiver by Lucia Mar Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-249712, *et al.*, CC Docket No. 02-6, Order, 19 FCC Rcd. 20364, para. 3 (Wireline Competition Bur. Rel. May 28, 2004); *Request for Review by East Carroll Parish School Board, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591, 24594, para. 7 (Wireline Comp. Bur. 2002).

<sup>22</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School*).

<sup>23</sup> *See* 47 U.S.C. § 254(h).

<sup>24</sup> We also direct USAC to waive any subsequent deadlines, such as the FCC Form 472 deadline, related to the processing of Douglas-Omaha's application.

investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were improperly disbursed or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal process. 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 our own procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

9. 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 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 the Request for Waiver filed by Douglas-Omaha Technology Commission, Omaha, Nebraska, IS GRANTED, and the application IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

10. 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, that USAC SHALL COMPLETE its review of the application and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from release of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Deputy Chief  
Wireline Competition Bureau