

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of Decision of the
Universal Service Administrator by
Abington School District
Abington, Pennsylvania
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-309152
CC Docket No. 02-6

ORDER

Adopted: November 14, 2006

Released: November 14, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant an appeal by Abington School District (the District) of a decision by the Universal Service Administrative Company (USAC) that reduced the District's funding from the schools and libraries universal service support mechanism (also known as the E-rate program) for funding year (FY) 2002. Specifically, we waive, in part, our technology plan rules and remand the underlying application to USAC for further consideration consistent with this Order. To ensure that the remanded application is resolved expeditiously, we direct USAC to complete its review of the District's 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.

II. BACKGROUND

2. The E-rate program permits eligible schools, libraries, and consortia that include eligible schools and libraries to apply for funding in the form of discounts on eligible telecommunications services, Internet access, and internal connections. The Commission requires participating schools and libraries to base their requests for discounts on an approved technology plan, unless they are seeking

1See Letter from S. Robert Wagman, Supervisor of Facilities, Abington School District, CC Docket No. 02-6 (filed July 18, 2002) (Request for Review). 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).

2USAC determined that the District did not have a technology plan in place for a requested service for Funding Year (FY) 2002. Funding Year 2002 started on July 1, 2002 and ended on June 30, 2003.

347 C.F.R. §§ 54.501-54.503.

4Id. §§ 54.504(b)(2)(iii)-(iv), 54.508; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9077, para. 572 (1997) (Universal Service Order) (subsequent history omitted).

discounts on “basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.”⁵ Specifically, to ensure that applicants make appropriate decisions regarding the services for which they seek discounts, applicants must develop a technology plan prior to requesting bids on services through the filing of an FCC Form 470.⁶ In addition, to ensure that the plans are based on the reasonable needs and resources of the applicants and are consistent with the goals of the program, the technology plans must be independently approved by a state agency or other specified entity.⁷ Applicants whose technology plans have not been approved when they file FCC Form 470 must certify that they understand their technology plans must be approved prior to the commencement of service.⁸ They also must confirm, in FCC Form 486, that their plan was approved before they began receiving services.⁹

3. The District requests review of USAC’s decision to reduce the District’s funding from the E-rate program because USAC determined that it did not have a technology plan in place for a requested service for FY 2002 (July 1, 2002 through June 30, 2003). Specifically, the District requested funding for 20 Off Premise Extension (OPX) lines, which are extensions of a Private Branch Exchange (PBX) system. The District claims that the requested service is a basic telephone service and, therefore, no technology plan is required.¹⁰ The District further notes that, although it has had an approved technology plan in place since 1997,¹¹ a technology plan had not been required for this particular service in the past.¹² In fact, the District claims that it received funding for this same service in each of the first four funding years and that a technology plan had not been required for this service in any of those years.¹³

III. DISCUSSION

4. Based on the facts and the circumstances of this funding application, we conclude that there is good cause to waive the applicable technology plan rules and to grant the District’s Request for

⁵47 C.F.R. § 54.504(b)(2)(iv); Universal Service Administrative Company, Eligible Services List, http://www.universalservice.org/_res/documents/sl/pdf/els_archive/2006-eligible-services-list.pdf (dated Nov. 18, 2005) (*2006 Eligible Services List*) (“If submitting [an] application ONLY for single line voice services (Local, Cellular/PCS, and/or long distance telephone service), applicants are not required to develop a Technology Plan. Applicants applying for other products or services, including PBX, key system, Centrex system, or similar technology are required to develop a Technology Plan.”); *see also 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 (Com. Carr. Bur. 2001).

⁶47 C.F.R. § 54.504(b)(2)(iii).

⁷*Id.* § 54.508(d); *Universal Service Order*, 12 FCC at 9078, para. 574. *See also* Universal Service Administrative Company, Technology Plans, <http://www.universalservice.org/sl/applicants/step02/> (last modified Jan. 6, 2006).

⁸47 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, 15826-30, para. 56 (2004) (*Fifth Report and Order*). Applicants whose technology plans have not been approved when they file FCC Form 471 once again certify that they understand their technology plans must be approved prior to the commencement of service. 47 C.F.R. §§ 54.504(c)(1)(iv)-(v).

⁹47 C.F.R. § 54.508(c).

¹⁰Request for Review at 1.

¹¹We presume, but need not determine, that the District created the technology plan to cover other requested services.

¹²Request for Review at 1.

¹³*Id.*

Review.¹⁴ First, until October 2003, which is after the funding year in question, the Eligible Services List did not specify that voice services provided via PBX require a technology plan.¹⁵ The District was therefore not aware that it needed a technology plan for the service in question. As the Commission previously noted, many E-rate applications are prepared by school administrators, technology coordinators, teachers and librarians—workers whose primary role in the school or library is unrelated to pursuing federal grants, especially in small school districts or libraries.¹⁶ Moreover, the District has demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest by denying its funding request under those circumstances.¹⁷ Finally, although the technology plan requirements are important to guard against the waste of program funds, there is no evidence in the record that the District engaged in activity intended to defraud or abuse the E-rate program.

5. Accordingly, we waive the requirement that the District have an approved technology plan in place for FY 2002 for the OPX extensions of the PBX service at issue. We remand the underlying application to USAC for further consideration consistent with this Order. In remanding the District's underlying application to USAC, we make no finding as to the ultimate eligibility of the requested services. To ensure that this Request for Review is resolved expeditiously, we direct USAC to complete its review of the District's 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. If, on remand, USAC determines that it needs additional information to process the application, USAC shall permit the District to provide the information within 15 calendar days of receiving notice in writing from USAC that additional information is required.¹⁸

¹⁴See 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v), 54.508(c)-(d). 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.

¹⁵See Universal Service Administrative Company, Archived Versions of the Eligible Services List, http://www.sl.universalservice.org/reference/ESL_archive.asp (last modified Jan. 6, 2006). Until October 2003, the Eligible Services List specified, in the Centrex entry, that applicants requesting discounts on Centrex service need technology plans, but there was no such language in the PBX entry. *Id.* Beginning in 2003, the Eligible Services List stated that “[a]pplicants applying for other products or services, including PBX, key system, Centrex system, or similar technology are required to develop a Technology Plan.” *Id.*

¹⁶See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.; Federal-State Joint Board on Universal Service*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5323, para. 14 (2006). In this case, the person responsible for the District's E-rate application appears to be the District's Supervisor of Facilities.

¹⁷See 47 U.S.C. § 254(h).

¹⁸The District will be presumed to have received notice five days after such notice is postmarked by USAC. USAC, however, shall continue to work beyond the 15 days with the District if the District attempts in good faith to provide correct information.

IV. ORDERING CLAUSES

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 pursuant to authority delegated in 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 Abington School District IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

7. 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 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 sections 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(c)-(d) of the Commission's rules, 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), (c)(1)(iv)-(v) and 54.508(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 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 associated with the Request for Review filed by Abington School District 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau