

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

In the Matter of	)	
	)	
Requests for Waiver of Decisions of the Universal Service Administrator by	)	
	)	
Academy for Academic Excellence Apple Valley, California, <i>et al.</i>	)	File Nos. SLD-539076, 539722, <i>et al.</i>
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

**ORDER**

**Adopted: March 9, 2007**

**Released: March 9, 2007**

By the Acting Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant Requests for Waiver filed by 44 applicants seeking waiver of the FCC Form 471 filing window deadline for Funding Years 2004, 2005, 2006, or 2007<sup>1</sup> under the schools and libraries universal service support mechanism (also known as the E-rate program).<sup>2</sup> Upon review of these requests, we find that the issue raised here was recently addressed by the Commission in the *Bishop Perry Order*.<sup>3</sup> Therefore, we remand the underlying applications to the Universal Service Administrative Company (USAC or Administrator) for further action consistent with the *Bishop Perry Order*.<sup>4</sup> To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of

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<sup>1</sup> Funding Year 2004 started July 2, 2004 and ended on June 30, 2006. Funding Year 2005 started on July 1, 2005 and ended on June 30, 2006. Funding Year 2006 started on July 1, 2006 and will end on June 30, 2007. Funding Year 2007 will start on July 1, 2007 and end on June 30, 2008.

<sup>2</sup> A list of these pleadings is attached as an Appendix. 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). Although Adair County R-1 School District, Alabama Institute for Deaf and Blind, Cloudercroft Municipal Schools, Endinburg Consolidated Independent School District, Portsmouth School Department, Providence Independent School District, Sacred Heart High School, Springfield School District, Stafford Municipal School District, The Logan School, and Underwood Community School District did not explicitly request a waiver of the FCC Form 471 filing window deadline, we will treat their Requests for Review as Requests for Waiver because the Administrator denied their FCC Forms 471 or denied their appeals on the grounds that their FCC Forms 471 were filed late.

<sup>3</sup> See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, 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 (2006) (*Bishop Perry Order*) (waiving the Commission's rules to, *inter alia*, allow applicants' to timely file their FCC Forms 471).

<sup>4</sup> *Id.*

each application listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 days from release of this Order.

## II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, basic maintenance and internal connections.<sup>5</sup> The applicant must file an FCC Form 470 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.<sup>6</sup> The FCC Form 470 must be posted on USAC's schools and libraries division website for at least 28 days before the applicant can file its FCC Form 471.<sup>7</sup> The FCC Form 471 must be filed within each funding year's filing window because, under Commission rules, USAC treats all filings made within the filing window as if the applications were simultaneously received.<sup>8</sup> Because the demand for funding each year has always exceeded the annual cap, if an FCC Form 471 is filed outside of the window, the applicant will not receive funding.<sup>9</sup>

3. USAC denied Petitioners' applications for discounted services under the E-rate program based on their failure to timely file their FCC Forms 471. In the Requests for Review before us, Petitioners request a waiver of the Commission's deadline for filing the FCC Form 471.

## III. DISCUSSION

4. We grant the Requests for Waiver filed by 44 applicants seeking waiver of Commission rules or of USAC decisions that denied funding for applications that were filed outside of the FCC Form 471 filing window.<sup>10</sup> Petitioners assert a waiver is appropriate for one of two reasons: (1) someone on the applicants' staff failed to file on time due to misunderstanding or personal emergencies, or (2) the delay in the filing or the receipt by USAC of the FCC Form 471 was due to circumstances out of the applicants' control. Specifically, several Petitioners state that they were unable to comply with the filing deadline due to staff illness or relatives of staff members who were ill.<sup>11</sup> Other Petitioners indicate that relevant

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<sup>5</sup> 47 C.F.R. §§ 54.501-54.504.

<sup>6</sup> 47 C.F.R. § 54.504(b).

<sup>7</sup> 47 C.F.R. § 54.504(b)(4).

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

<sup>9</sup> 47 C.F.R. § 54.507.

<sup>10</sup> See Appendix. The Commission may waive any provision of its rules on its own motion and 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>11</sup> Request for Waiver of Aurora City Schools; Request for Review for Nativity School South Park; Request for Waiver of Nellie Pederson Civic Library; Request for Waiver of Oak Ridge School District R-VI; Request for Waiver of Springvale Public Library; Request for Waiver of St. Mary's Episcopal School; and Request for Waiver of Western Massachusetts Regional Library.

members inadvertently failed to file the application forms in a timely manner.<sup>12</sup> Still other Petitioners claim that the rules and instructions for filing the FCC Form 471 are vague and unclear and that the resulting misunderstandings led to forms being filed after the filing window.<sup>13</sup> The remainder of Petitioners failed to file an FCC Form 471 in a timely manner due to circumstances beyond their control, such as school reorganizations or inclement weather.<sup>14</sup> In particular, Petitioners state that technical problems, either with their own equipment or while interfacing with USAC's electronic filing mechanism, prevented their FCC Forms 471 from being timely filed.<sup>15</sup>

5. Based on the facts and circumstances of these specific cases, we find that special circumstances warrant a waiver of the deadline for filing the FCC Form 471 found in section 54.507 of the Commission's rules.<sup>16</sup> As the Commission found in the *Bishop Perry Order*, we find that the complete rejection of these applications is not warranted, given that the violation at issue is procedural, not substantive.<sup>17</sup> Like the applicants in the *Bishop Perry Order*, the applicants at issue here have demonstrated that rigid adherence to filing procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.<sup>18</sup> Although we base our decision to grant these requests in part on the fact that many of the rules at issue here are procedural, such a decision is in the context of the purposes of section 254 and cannot be applied generally to other Commission rules that are procedural in nature. Specifically, section 254 directs the Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries."<sup>19</sup> Because applicants who are eligible

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<sup>12</sup> Request for Review of Adair County R-1 School District; Request for Review of Alabama Institute for Deaf and Blind; Request for Waiver of Blessed Sacrament Regional School; Request for Waiver of Oconee Regional Library System; Request for Review of Springfield School District; and Request for Waiver of St. Paul School.

<sup>13</sup> Request for Review of Cloudcroft Municipal School; Request for Waiver of Easton Public Schools; Request for Review of Edinburg Consolidated Independent School District; Request for Waiver of Grinnell Public Schools; Request for Waiver of Lawrence Public Schools; Request for Waiver of Maryetta Elementary School; Request for Waiver of Pottsboro Independent School District; Request for Review of Providence Independent School District; Request for Waiver of Ray Unified School #3; and Request for Waiver of St. Augustine School.

<sup>14</sup> Request for Waiver of Arab City School District; Request for Waiver of Brantley County Board of Education; Request for Waiver of Fairport Harbor Schools; Request for Waiver of Lubavitch Educational Center; Request for Waiver of Martin County West Public Schools; Request for Waiver of Middleton School District #134; Request for Waiver of Pomeroy-Palmer Community School District; Request for Review of Portsmouth School Department; Request for Review of Sacred Heart High School; Request for Waiver of Saint Barnabas High School; Request for Waiver of The Epiphany School; Request for Review of The Logan School; and Request for Waiver of Warren County Vocational School District.

<sup>15</sup> Request for Waiver of Academy for Academic Excellence; Request for Waiver of Klamath-Trinity Joint Unified School District; Request for Waiver of Osage County Interlocal Cooperative (On behalf of Frontier Public Schools); Request for Waiver of Osage County Interlocal Cooperative (On behalf of Newkirk Public School); Request for Waiver of Philadelphia Youth Build Charter School; Request for Waiver of Pinon Community School Board, Inc.; Request for Review of Stafford Municipal School District; and Request for Review of Underwood Community School District. One Petitioner claims that it attempted to mail its FCC Form 471 on time but that problems with a third-party carrier prevented the application from arriving in a timely manner. Request for Waiver of Pinon Community School Board, Inc.

<sup>16</sup> 47 C.F.R. § 54.507.

<sup>17</sup> *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

<sup>18</sup> See 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

<sup>19</sup> See 47 U.S.C. § 254(h).

for funding will now receive the opportunity for that funding where previously it was denied for minor errors, we believe granting waivers of these rules in these instances, particularly in light of the limited 15-day correction period we impose, will better ensure that universal service support is distributed first to the applicants who are determined by our rules to be most in need, and thus, further the goals of section 254. As the Commission noted in the *Bishop Perry Order*, even in the context of the schools and libraries program, the waivers here should not be read to mean that applicants will not be required in the future to comply fully with our procedural rules, which are vital to the efficient operation of the E-rate program.<sup>20</sup>

6. We also note that granting these Requests for Waiver should have a minimal impact on the Universal Service Fund because the monies needed to fund these requests, should they all be fully funded, have already been collected and held in reserve.<sup>21</sup> We therefore find that good cause exists to grant and remand the underlying applications to USAC for further action consistent with the *Bishop Perry Order*. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services. 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 a denial based on a complete review and analysis no later than 90 calendar days from release of this Order.

7. Finally, we are 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 Requests for Waiver addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and 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 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 processes. 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 the Commission's procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

8. 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 Requests for Waiver of 47 C.F.R. §54.507 filed by the Petitioners as listed in the Appendix ARE GRANTED and REMANDED to USAC for further action consistent with the terms of this Order.

9. 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 the

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<sup>20</sup> *Bishop Perry Order*, 21 FCC Rcd at 5319, para. 9.

<sup>21</sup> We estimate that the Request for Review granted in this Order involve applications for approximately \$1.8 million in funding for Funding Years 2004-2007. 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 First Quarter 2007, dated Nov. 2, 2006. *See* USAC website, <http://search.universalservice.org/query.html?qt=fund+size+projections> (retrieved March 5, 2007).

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), USAC SHALL COMPLETE its review of the underlying applications as listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 90 days from release of this Order.

10. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon  
Acting Deputy Chief  
Wireline Competition Bureau

## APPENDIX

Requests for Waiver

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>
Academy for Academic Excellence Apple Valley, CA	539076, 539722	2006
Adair County R-1 School District Novinger, MO	539280	2006
Alabama Institute for Deaf and Blind Talladega, AL	402182	2004
Arab City School District Arab, AL	522281	2006
Aurora City Schools Aurora, OH	538287, 538375, 538381, 538385, 538392	2006
Blessed Sacrament Regional School Margate, NJ	FCC Form 470 Number 957270000	2006
Brantley County Board of Education Nahunta, GA	538866	2006
Cloudcroft Municipal Schools Cloudcroft, NM	539260	2006
Easton Public Schools North Easton, MA	FCC Form 470 Numbers 240050000552718, 77432000059399	2006
Endinburg Consolidated Independent School District Edinburg, TX	457280	2005
Fairport Harbor Schools Fairport Harbor, OH	479146	2005
Grinnell Unified School District Grinnell, KS	538532	2006
Klamath-Trinity Joint Unified School District Hoopa, CA	537945	2006
Lawrence Public Schools Lawrence, MI	539201	2006
Lubavitch Educational Center Miami, FL	FCC Form 470 Number 177450000556618	2006
Martin County West Public Schools Welcome, MN	FCC Form 470 Number 100040000611630	2007
Maryetta Elementary School Stilwell, OK	482137	2005
Middleton School District #134 Middleton, ID	FCC Form 471 Number 175290000591254	2007
Nativity School South Park Pittsburgh, PA	538541	2006
Nellie Pederson Civic Library Clifton, YX	540203	2006
Oak Ridge School District R-VI	539029	2006

Oak Ridge, MO		
Oconee Regional Library System Dublin, GA	541020, 541024, 541025, 541026	2006
Osage County Interlocal Cooperative (On behalf of Frontier Public Schools Hominy, OK	538398	2006
Osage County Interlocal Cooperative (On behalf of Newkirk Public School) Hominy, OK	538596	2006
Philadelphia Youth Build Charter School Philadelphia, PA	Billed Entity Number 209918	2006
Pinon Community School Board, Inc. Pinon, AZ	528797	2006
Pomeroy-Palmer Community School District Pomeroy, IA	FCC Form 470 Number 210050000568377	2006
Portsmouth School Department Portsmouth, RI	538569	2006
Pottsboro Independent School District Pottsboro, TX	538771	2006
Providence Independent School District Providence, KY	539183	2006
Ray Unified School #3 Kearny, AZ	537531	2006
Sacred Heart High School Hallettsville, TX	538667	2006
Saint Barnabas High School Bronx, NY	492551	2006
Springfield School District Springfield, CO	538591	2006
Springvale Public Library Springvale, ME	FCC Form 470 Application Number 157560000552893	2006
Stafford Municipal School District Stafford, TX	539478	2006
St. Augustine School Rensselear, IN	539122	2006
St. Mary's Episcopal School Memphis, TN	539031	2006
St. Paul School Salem, OH	536167, 538202	2006
The Epiphany School New York, NY	539498	2006
The Logan School Denver, CO	508418	2006
Underwood Community School District Underwood, IA	538464	2006
Warren County Vocational School District Lebanon, OH	FCC Form 470 Application Number 209020000581296	2006
Western Massachusetts Regional Library South Deerfield, MA	538389	2006