

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

In the Matter of)	
)	
Request for Waiver of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Otsego Local School District)	File No. SLD-355487
Tontogany, OH)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: March 9, 2007

Released: March 9, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a Request for Waiver filed by the Otsego Local School District, Tontogany, Ohio (Otsego).¹ Otsego seeks a waiver of the designation of its district as “urban” under section 54.505(b)(3) of the Commission’s rules by the Universal Service Administrative Company (USAC) for purposes of calculating its discount level under the schools and libraries universal service support mechanism.²

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, also known as 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.³ The level of discount is determined primarily by the level of economic disadvantage, with some schools and libraries located in rural areas receiving an additional discount of up to 10 percent (depending on their level of disadvantage).⁴ The Commission directed USAC to classify schools and libraries as “urban” or

¹ See Letter from Joe Long, Superintendent, Otsego Local School District, to Federal Communications Commission, filed July 9, 2003 (Waiver Request).

² See 47 C.F.R. §54.505(b)(3).

³ See 47 C.F.R. §§ 54.501-54.503, 54.505(b)(3); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9040-44, paras. 501-07 (1997) (*1997 Universal Service Order*) (*subsequent history omitted*).

⁴ See 47 C.F.R. § 54.505(c). The Commission adopted the discount matrix for determining the discount rate for which a school or library is eligible, based on two factors: economic need and location in an “urban” or “rural” area. *Id.*; see *1997 Universal Service Order*, 12 FCC Rcd at 9050, para. 520.

“rural” in accordance with definitions adopted by the Office of Rural Health Policy (ORHP).⁵ Specifically, schools and libraries are designated as “rural” if they are located in either a non-metropolitan county as defined by the Office of Management and Budget (OMB) or in an area specifically identified in the most recent Goldsmith Modification list published by the ORHP.⁶ The Commission adopted this approach because it imposed a minimal burden on schools, libraries, and carriers to determine eligibility for the additional incremental discount and was also consistent with the approach adopted with respect to rural health care in the *1997 Universal Service Order*.⁷

3. In June 2003, USAC granted Otsego’s Funding Year 2003 (July 1, 2003 to June 30, 2004) application at a discount rate of 44 percent for its eligible services.⁸ USAC determined Otsego’s discount level based on the percentage of students eligible for the national student lunch program at the schools located in the Otsego’s local school district and Otsego’s designation as “urban” under the Commission’s rules.⁹ Because Otsego was designated as “urban” by USAC, it was not granted any additional incremental discount.¹⁰ In July 2003, Otsego filed the instant Request for Waiver seeking a waiver of the designation of its local school district as “urban” under the E-rate program so that it can be treated as located within a rural area.¹¹ As an applicant eligible for a 44 percent discount, the discount matrix would entitle it to an additional 10 percent discount if it was recognized as rural, for a total 54 percent discount rate on its eligible services under the E-rate program.¹²

4. In its Request for Waiver, Otsego reports that its residents pay a premium for phone calls to the nearest urban area – Toledo – or even to Toledo’s suburbs.¹³ It also contends that its district covers

⁵ *1997 Universal Service Order*, 12 FCC Rcd at 9115-9116, para. 649; 47 C.F.R. § 54.505(b)(3).

⁶ See 47 C.F.R. §§ 54.5 “Rural Area”; 54.505(b)(3)(ii). The Goldsmith Modification is a procedure for identifying isolated rural neighborhoods within large metropolitan counties. See Harold F. Goldsmith, Dena S. Puskin, and Dianne J. Stiles, *Improving the Operational Definition of “Rural Areas” for Federal Programs*, Federal Office of Rural Health Policy 1993, available at <http://ruralhealth.hrsa.gov/pub/Goldsmith.htm> (retrieved April 6, 2006). In 2005, the list was updated to reflect the 2000 Census data. See <http://ruralhealth.hrsa.gov/funding/eligibilitytestv2.asp> (retrieved April 6, 2006).

⁷ See *1997 Universal Service Order*, 12 FCC Rcd at 9042-43, paras. 504-506. We note that, in 2003, the Commission sought comment on possible changes to the definition of rural in the context of both the E-rate and rural health care programs. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939-41, paras. 67-69 (2003) (*Schools and Libraries Second FNPRM*); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24578, paras. 63-64 (2003) (*Rural Health Care Report and Order*). In 2004, the Commission modified its definition of “rural area” for the rural health care program, but the Commission has not yet adopted a new definition of rural for the E-rate program. See *Rural Health Care Support Mechanisms*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, 24617-24, paras. 9-23 (2004) (*Rural Health Care Second Report and Order*).

⁸ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Craig Flick, Otsego Local School District, dated June 30, 2003 at 6 (Funding Commitment Decision Letter).

⁹ See 47 C.F.R. §§ 54.505(b)(1), 54.505(b)(3)(i).

¹⁰ See Funding Commitment Decision Letter; 47 C.F.R. § 54.505(c).

¹¹ See Waiver Request at 1.

¹² See FCC Form 471, Otsego Local School District, filed January 27, 2003, at block 4; 47 C.F.R. § 54.505(c).

¹³ See Waiver Request at 2.

over one-hundred and fifty square miles and includes only four small villages.¹⁴ It further contends that both the AAA Tour Book and the PRIZM lifestyle segmentation system view Otsego as rural and that any visitor to the school district traveling from any direction would immediately recognize its local district as rural.¹⁵ Thus, Otsego argues that its local school district has a strong rural character and nature and should be designated as “rural” for purposes of calculating its discount level under the E-rate program.

5. The Commission may waive any provision of its rules on its own motion for good cause shown.¹⁶ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ 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.¹⁹

III. DISCUSSION

6. We do not find good cause to grant Otsego’s request for waiver seeking to have its local school district to be classified as “rural” under the Commission’s E-rate rules for purposes of receiving universal service support. The classification of a school or library as “rural” or “urban” under the Commission’s rules is a two-part process. First, a school or library must determine whether it is located in a metropolitan (urban) county, as defined by OMB.²⁰ Second, if it is located in a metropolitan county, a school or library may nevertheless be classified as “rural” if its location falls within one of the rural pockets within metropolitan counties identified by the Goldsmith Modification list used by ORHP.²¹ A significant benefit of adopting this approach was to provide a clear and certain standard for determining whether an entity is “rural.” Otsego has not challenged the method for classifying whether a school or library is “rural.” Rather, Otsego’s only arguments in support of its waiver request are general observations it makes about some of the rural characteristics of its local school district.²² Otsego does not provide any reason to believe that the current definition unfairly discriminates against Otsego’s local school district as compared to any other school districts that have some rural characteristics, but which do not meet the current definition of “rural” under the E-rate program.²³ In fact, Otsego’s local school

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 2.

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁸ *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).

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ See 47 C.F.R. § 54.505(b)(3)(i); *1997 Universal Service Order*, 12 FCC Rcd at 9114, para. 647, n. 1698 (stating that OMB, with assistance from the Bureau of Census, designates counties as metropolitan or non-metropolitan in character based on the size of the largest urban aggregation in a county and patterns of commuting between counties).

²¹ See 47 C.F.R. § 54.505(b)(3)(ii); *1997 Universal Service Order*, 12 FCC Rcd at 9115, para. 647, n. 1700 (stating that the Goldsmith Modification identifies small town and open-country parts of large metropolitan counties by census tract or block-numbered area, as defined by the Bureau of Census).

²² See *supra* para. 4.

district will benefit from E-rate universal service support at a 44 percent discount level, regardless of whether its classification is “urban” or “rural.”²⁴ Therefore, we find that the facts presented by Otsego do not establish “special circumstances” that would justify a waiver of the Commission’s general rule.²⁵ Accordingly, we deny Otsego’s Request for Waiver.

IV. ORDERING CLAUSES

7. 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, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the Request for Waiver filed by the Otsego Local School District IS DENIED.

8. 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

²³ We, however, encourage Otsego to submit its comments on what factors should qualify an applicant as “rural” for the purposes of the Commission’s evaluation of whether to modify the current E-rate definition of rural. *See supra* n.7.

²⁴ *See supra* para. 3.

²⁵ *See* 47 C.F.R. § 54.505(b)(3). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, AAD/USB File No. 98-34, Memorandum Opinion and Order, 13 FCC Rcd 24968 (Com. Car. Bur. 1998) (denying seven school districts’ petitions for waiver of their designations as “urban” under the Commission’s rules and finding that petitioners’ did not present any “special circumstances” justifying a waiver of the Commission’s rules).