

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Waiver of Decisions of the
Universal Service Administrator by
Cass Lake-Bena Schools, ISD No. 115
Cass Lake, Minnesota, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-251875, et al.
CC Docket No. 02-6

ORDER

Adopted: March 13, 2007

Released: March 13, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

1. In this Order, we deny four appeals of decisions by the Universal Service Administrative Company (USAC) reducing or denying funding from the schools and libraries universal service support mechanism (also known as the E-rate program) for Funding Year 2001 on the grounds that they failed to timely submit an FCC Form 486. 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 the applicant has received approval of its technology plans. The timely submission of FCC Form 486 ensures that disbursements for discounts on eligible

1 Funding year 2001 started on July 1, 2001 and ended on June 30, 2002.

2 In this Order, we use the term "appeals" to generically refer to requests for review of decisions, waivers or applications for review related to such decisions, issued by the Wireline Competition Bureau or USAC. A list of these petitions is attached in the Appendix and we will refer to all of these parties as Petitioners. 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).

3 See 47 C.F.R. §§ 54.501-54.503.

4 See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Funding Year 2001 FCC Form 471).

5 47 C.F.R. § 54.504(c).

6 Instructions for Completing the Schools and Libraries Universal Service Receipt of Service Confirmation Form,

services occur 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>7</sup>

2. In accordance with the requirements of the Children's Internet Protection Act (CIPA),<sup>8</sup> the Commission added a deadline for Funding Year 2001 FCC Forms 486 to be filed no later than October 28, 2001, with limited exceptions.<sup>9</sup> In cases where a funding commitment decision letter (FCDL) was issued by USAC after that date, but services started on or before October 28, 2001, the applicant needed to have postmarked its FCC Form 486 no later than 120 days after the date of the FCDL in order to receive discounts retroactively back to the service start date.<sup>10</sup> If the Form 486 was postmarked later than 120 days after the date of the FCDL, then USAC adjusted the funding commitment to start with the date that the FCC Form 486 was postmarked.<sup>11</sup>

3. Petitioners' requests for funding were denied or reduced because USAC found that the FCC Forms 486 were filed late or not filed. Petitioners have requested a waiver of the deadlines or a review of USAC's decision to deny or reduce funding because of the Petitioners' late filings.

4. We deny the appeals filed by the four Petitioners seeking waiver of the FCC Form 486 deadline.<sup>12</sup> Although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute.<sup>13</sup> The October 28, 2001, deadline for schools

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OMB 3060-0853 (July 2001) (2001 FCC Form 486 Instructions).

<sup>7</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>8</sup> See 47 U.S.C. §§ 151 *et seq.*

<sup>9</sup> 47 U.S.C. § 254(h)(5)(E), (6)(E); *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8188-89, 8191, paras. 10, 18 (2001) (*CIPA Order*). CIPA requires that applicants in Funding Year 2001 filed certifications of compliance with the statute within 120 days of the start of the funding year. See 47 U.S.C. § 254(h)(5)(E)(i)(I), (6)(E)(i)(I).

<sup>10</sup> See Instructions for Completing the Schools and Libraries Universal Service Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) at 9.

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

<sup>12</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>13</sup> See *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, 24594-95, para. 10 (Wireline Comp. Bur. 2002); *Request for Review St. Helen School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-172423, 172425, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 23520, 23534-25, para. 8 (Com. Car. Bur. 2002); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 7170, para. 13 (1999); see also *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) ("the exercise of quasi-legislative authority by governmental

receiving Internet access and internal connections discounts to submit their CIPA certifications in Funding Year 2001 was established by the statute, which requires that CIPA certifications must be made within 120 days of the start of the first funding year following the effective date of the statute.<sup>14</sup> None of the Petitioners submitted their CIPA certifications within this timeframe.<sup>15</sup> Because the Petitioners were receiving discounts on Internet access, and were therefore subject to the October 28, 2001 deadline imposed by the CIPA statute, we are thus without authority to waive that deadline.

5. 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 under 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 appeals filed by the Petitioners as listed in the Appendix ARE DENIED.

6. 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 under 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 filed by the Petitioners as listed in the Appendix ARE DENIED.

7. 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

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departments and agencies must be rooted in a grant of such power by the Congress and subject to the limitations which that body imposes”).

<sup>14</sup> 47 U.S.C. § 254(h)(5)(E)(i)(I); *see CIPA Order* 16 FCC Rcd at 8188-8190, paras. 10-14.

<sup>15</sup> Cass Lake-Bena Schools concedes that its FCC Form 486 was never filed with USAC. *See* Cass Lake-Bena Schools Request for Waiver at 1. Chama Valley Independent School District thought that its FCC Form 486 was filed, but later learned that it had not submitted the form. When it submitted the form, the deadline for FCC Form 486 had passed. *See* Chama Valley Independent School District Request for Waiver at 1. East Haddam said it filed an FCC Form 486 before the deadline, but concedes that it withdrew this document and filed another FCC Form 486 after the deadline to reflect a change in service provider. *See* East Haddam Request for Review at 1. Stafford Public Schools (Stafford) filed its FCC Form 486 in a timely manner, but did not use the correct OMB-approved FCC Form 486. When it resubmitted the form, the deadline for FCC Form 486 had passed. *See* Stafford Public Schools Application for Review at 1. The Bureau denied its original Request for Waiver and Stafford is now appealing the Bureau's decision in its application for review. *See Request for Review of the Decision of the Universal Service Administrator by Clinton County RESA, et al., Schools and Libraries Universal Service Mechanism*, File Nos. SLD-310916, *et al.*, CC Docket No. 02-6, Order, 19 FCC Rcd 3905 (Wireline Comp. Bur. 2004); Stafford Public Schools Application for Review at 1.

## Appendix:

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Type of Appeal</b>
Cass Lake-Bena Schools, ISD No. 115 Cass Lake, MN	251875	2001	Request for Waiver
Chama Valley Independent School District Tierra Amarilla, NM	248425	2001	Request for Waiver
East Haddam Board of Education Moodus, CT	239170	2001	Request for Review
Stafford Public Schools Stafford Springs, CT	230427	2001	Application for Review